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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 504

SCRIPTURE PRESS FOUNDATION, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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October 17, 1961

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Claims, entered in the above-entitled case on January 18, 1961, as amended July 19, 1961.

CITATION TO OPINION BELOW

The opinion of the Court of Claims rendered on January 18, 1961, is reported at 285 F. 2d 800 and is reprinted as an appendix hereto. Also reprinted in the appendix, but not reported, are the findings of fact and conclusion of law of the Court of Claims.

JURISDICTION

The judgment of the Court of Claims was entered on January 18, 1961. A timely motion for rehearing and reconsideration was denied on July 19, 1961. This petition for a writ of certiorari is filed less than ninety days after the denial of rehearing and reconsideration. The jurisdiction of this Court is invoked under 28 U.S.C. § 1255 (1).

QUESTION PRESENTED

Whether, under § 101(6) of the Internal Revenue Code of 1939 and § 501(c)(3) of the Internal Revenue Code of 1954, the proper standard for determining a non-profit religious publishing organization's tax exempt status as a religious or educational corporation, where none of its activities competes with those of ordinary commercial concerns, is (1) the substantiality or primacy of its religious publication sales, or (2) the religious and educational purposes to which its profits and activities are exclusively devoted and destined.

STATUTES INVOLVED

Section 101(6) of the Internal Revenue Code of 1939, 53 Stat. 33, 26 U.S.C. § 101(6) (1952 ed.), as amended by § 301(c)(1), Revenue Act of 1950, 64 Stat. 906, and by § 314(b)(1), Revenue Act of 1951, 65 Stat. 452, 492, reads as follows:

> EXEMPTIONS FROM TAX ON CORPORATIONS
>
> Except as provided in paragraph (12)(B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—
>
> * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814; * * *

The successor to § 101(6) of the Internal Revenue Code of 1939 is § 501(c)(3) of the Internal Revenue Code of 1954, 68A Stat. 163, reading as follows:

(c) LIST OF EXEMPT ORGANIZATIONS.—

* * * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

STATEMENT OF THE CASE

Petitioner, claiming it was exempt from federal corporate income taxes by virtue of its religious and educational nature, filed this suit in the Court of Claims

for the recovery of taxes paid for the taxable year ending January 31, 1953. The amended complaint sought recovery in the amount of $159,588.18, including interest paid, plus interest thereon. The pertinent facts developed at the trial, as found by the Trial Commissioner and accepted by the Court of Claims, may be summarized as follows:

(1) Petitioner was organized in 1945 as a nonprofit, nonstock corporation under the laws of Illinois. It is devoted to religious educational purposes or objects, although independent of any particular religious denomination or church. It was the successor of a corporation known as Scripture Press, Inc., a profit corporation organized under Illinois law. In 1945 the stock of the latter corporation had been donated by its stockholders to the petitioner corporation, and Scripture Press, Inc., was then liquidated into petitioner.

(2) In 1946, based on a review of pertinent facts and data—including financial statements, publications, and the fact that petitioner's predecessor was a profit corporation—the Commissioner of Internal Revenue ruled that petitioner was *"organized and operated exclusively for religious purposes"* and hence was exempt from federal income taxes under § 101(6) of the 1939 Internal Revenue Code. This ruling was retroactive to the time when petitioner was incorporated in 1945.

(3) Petitioner was organized primarily by a husband and wife, Victor and Bernice Cory, who "had been and have remained firm in their religious belief and conviction that they had a Christian mission to provide and disseminate improved Sunday School

teaching and lesson materials, and by this and related means to advance and improve Christian education." Finding No. 24. Both of them are "devout Christians of the Evangelical Protestant Faith, and both of them developed a missionary zeal to promote and develop the effective teaching of the Bible in the Sunday School." Finding No. 32. Indeed, all of petitioner's members, officers, directors, and most of the employees were and are adherents of the evangelical theology of the Protestant faith. Finding No. 38. And all employees were and are required to be devout Christians, though not restricted to any particular denomination, and also otherwise qualified for the work performed. Finding No. 39. Daily worship and prayer meetings are held.

(4) Petitioner's articles of incorporation and by-laws provided that the purposes of the corporation were (a) the dissemination of the Gospel and the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities; (b) the organization and support of organizations, institutions, and movements exclusively devoted to Christian missionary, educational and other evangelical efforts; (c) the production, purchase, circulation, distribution and sale of Christian literature—including books, periodicals, pamphlets, tracts, placards, mottos and supplies; and (d) the conduct of publication and printing establishments. Finding Nos. 4 and 5.

(5) Petitioner's articles of incorporation were amended in 1954 to eliminate the organizational purpose of conducting a printing establishment (which petitioner had never done) and to elaborate and re-

state the corporate purposes. Included in the restatement was a provision for disposition of assets upon liquidation or dissolution to religious, charitable, scientific, literary or educational projects. Finding No. 6. Petitioner's printing and other work of a commercial nature are contracted out by petitioner to commercial concerns.

(6) After operating for eight years in accordance with the foregoing purposes, and accordingly exempt from taxation pursuant to the Commissioner's 1946 ruling, petitioner was advised in 1953 that its tax-exempt status was to be reconsidered "in view of recent changes in revenue legislation." Finding No. 17. Once again petitioner submitted to the Commissioner pertinent facts and data. In summarizing its activities, petitioner stated that it (a) prepared, published and distributed a variety of manuals, books, pamphlets, papers, magazines and supplies of all kinds for use in Sunday Schools and churches in about 52 Protestant denominations "for the purpose of aiding instruction in the Word of God", and (b) organized, supervised, aided in, and conducted institutes and conventions for training teachers in Christian Sunday Schools, Daily Vacation Bible Schools and other church schools. Finding No. 18.

(7) Petitioner's financial statements, as submitted to the Commissioner, revealed that at the close of the 1952 and 1953 fiscal years petitioner had total assets of $668,428.73 and $829,473.86, respectively. Its net sales of religious literature for those years totalled $1,675,819.59 and $1,964,520.60, respectively. Petitioner also advised the Commissioner that it had started a reserve toward the acquisition of a suitable building for its headquarters and had increased its

capital account to $400,000 for that purpose. Finding No. 19.

(8) As a result of his reconsideration, the Commissioner revoked his prior ruling and decreed that petitioner, commencing with the fiscal year ended January 31, 1953, would no longer be entitled to exempt status. In so ruling, he stated that "your primary activity in furtherance of your principal purpose is the publication and sale of religious publications, periodicals and supplies" and that, while such materials might be necessary to the carrying out of the religious functions of the purchasers, "the manufacture and supply thereof does not constitute a religious activity in itself but is *a business of a kind ordinarily carried on for profit.*" Finding No. 20; emphasis supplied. The Commissioner reaffirmed this ruling in 1954 and added: "Notwithstanding that the majority of the materials sold by you are prepared by members of your own staff as a result of their own research and creative endeavor, the preparation and sale thereof is not a religious activity within itself but is secular in nature. . . . Though you indicate that your organization does not have all the characteristics of the ordinary commercial publishing firm, in that you carry on activities other than publishing and selling which may be considered religious, it is shown that your primary activity consists of your publishing operations. *Since your primary activity consists of conducting a commercial enterprise*, as stated in our prior ruling, you cannot qualify for exemption." Finding No. 21; emphasis added.

(9) Additional facts submitted to the Commissioner and developed at the trial below revealed that petitioner has a board of directors, consisting now of seven prominent religious leaders, and that its affairs are primarily managed by an executive committee, com-

posed of petitioner's president, secretary and division heads. The five operating divisions are: (a) Editorial, creating most of petitioner's publications and editing all material published by it; (b) Dissemination, promoting sale of materials through mailing lists, distributing catalogs, advertising in religious magazines, and operating two religious bookstores; (c) Production, handling arrangements for the printing of petitioner's materials by outside printing companies, purchasing materials and supplies, and receiving and shipping orders; (d) Finance, handling all finances and accounting, and credits and collections; and (e) Personnel, handling employment and personnel matters. Finding No. 43.

(10) Within its Dissemination division, petitioner has an instructional department headed by an ordained minister. In 1957, alone, this department arranged and conducted some 244 conventions and seminars for ministers and workshops for Sunday School teachers at petitioner's headquarters building and at other locations throughout the nation. "The fundamental purposes of these activities are to stimulate the interest of Christian leaders and teachers in improved techniques and methods of Sunday School teaching, to train and instruct Sunday School teachers in such techniques and methods, and thereby to promote and improve the Sunday Schools and accomplish an effective teaching of the Bible to children." Finding No. 44. All of these conventions, seminars and workshops are provided by the petitioner without cost to the participants, and all materials employed by petitioner in connection with these instructional courses and sessions are supplied without cost.

(11) Petitioner's principal publications are the graduated Sunday School teaching and lesson mate-

rials known as the All Bible Grade Sunday School Lessons and the All Bible Vacation School Lessons. In addition, petitioner publishes a large number of religious pamphlets, booklets, and other supplemental teaching and lesson materials, and designs and provides various types of visual aids for teaching purposes. Finding No. 46. The chief editor and author of these materials has been Mrs. Cory. Finding No. 35.

(12) Approximately 94% of petitioner's sales are made directly to Sunday Schools throughout the country. About 26,000 Sunday Schools use petitioner's lesson materials and other items, representing 75 different Protestant denominations and more than 3,000,000 Sunday School pupils. Many thousands of pastors, ministers, Sunday School teachers and other religious leaders receive, free of charge, instructional training from petitioner's programs. Petitioner also makes substantial grants of lesson materials to newly formed Sunday Schools and other organizations unable to pay for such materials. Finding No. 47.

(13) About 85% of petitioner's total net sales, during the fiscal years from 1951 to 1957, represented petitioner's own productions of Sunday School teaching and lesson materials and supplemental publications and materials. The other 15% of the net sales related to books and merchandise purchased from others for resale, as to which petitioner realized little or no profit. Finding No. 48.

(14) By January 31, 1953, petitioner's balance of capital and surplus amounted to $744,798.26, all of which, except for its original capital of $30,710.11 transferred from Scripture Press, Inc., represented

retained earnings. Finding No. 51. Aside from $140,621.10 in Government bonds, this surplus was reflected principally in the asset values of accounts receivable and merchandise inventory, the former having increased from $22,343.94 in 1946 to $199,388.32 in 1953, and the latter from $71,607.98 in 1946 to $314,123.6 in 1953. Finding No. 51, Table III. The increases in these accounts resulted from the increase in sales from $640,794.60 in 1946 to $1,964,520.60 in 1953. Finding Nos. 13 and 18.

(15) Petitioner was found to have expended various sums, ranging from $21,835.67 in 1951 to $72,886.27 in 1957, for educational programs and instructional work at Sunday School meetings and conventions. Finding No. 49. These figures were on a non-accumulated annual basis and, due to an oversight by the Trial Commissioner, do not represent total expenditures for religious purposes. The evidence in the record shows that total expenditures for free religious instruction from 1951 through 1957 amounted to a total of $432,842.01, ranging from $24,717.67 in 1951 to $107,815.55 in 1957, instead of a total of $296,843.34.

(16) The capital and surplus item for the years 1951 to 1957 was found to have risen from $476,311.14 to $1,610,817.30. Finding No. 51. However, these figures were on an accumulated basis. All of these funds were accumulated for religious purposes, such as the erection of dormitories and related facilities for the free housing and care of ministers, Sunday School teachers and other church leaders attending seminars and other courses at petitioner's headquarters. Moreover, the entire accumulated surplus and capital are irrevocably dedicted to religious, educational, scientific or charitable projects and, on dissolution, the remain-

ing funds must go to such projects. Actually, the total annual additions to capital and surplus between 1951 and 1957 amounted to $1,293,586.03.

(17) During the 1951-1957 period, however, petitioner expended approximately $82,061 for cash donations, $141,230 for merchandise grants, and $432,842 for religious instruction—or a total of $656,133 in furtherance of its religious educational projects. Furthermore, since its headquarters building, costing over $1,000,000 and included in the accumulated surplus, is actually a part of petitioner's pursuit of its exempt purposes, the true total expended by petitioner for its exempt purposes is more than $1,656,000. That leaves some $590,000 remaining in surplus, which is likewise irrevocably dedicated to the pursuit of exempt purposes.

(18) Petitioner's headquarters building is not industrial or commercial in its construction but is designed to provide for religious educational objectives. In addition to facilities for publication and dissemination of religious literature, the building has a chapel seating 500, a prayer tower and a substantial number of classrooms. The building is used regularly for conducting the free conventions, seminars and workshops. Petitioner's employees hold their daily worship sessions in the chapel. Petitioner also contemplates adding, adjacent to its headquarters building, dormitories and related facilities for the free housing and care of those attending the conventions, seminars and workshops.

(19) The need for continued improvement in the training of Sunday School teachers and administrators was "abundantly shown in the record of this case." And it is "reasonably to conclude that plaintiff [peti-

tioner] has made a substantial contribution to the growth and development of the Sunday Schools in the United States." Finding No. 54. From the testimony of numerous religious leaders, it was made clear that petitioner is engaged in "the ministry of religious eduction." Finding No. 54.

(20) "The great majority of Sunday School lesson and teaching materials are published by denominational publishing houses, boards or other organized agencies of churches, and all of such publishing organizations are ruled tax-exempt by the Commissioner of Internal Revenue. All of such denominational publishing houses are controlled directly or indirectly by churches or church organizations. . . . There is no substantial evidence in this case that any commercial printing companies, operating as profit organizations, produce and sell Sunday School teaching and lesson materials comparable to those of plaintiff [petitioner], or engage in any religious educational programs." Finding No. 55.

Based upon the foregoing findings of fact, set forth in full in the appendix hereto, the Court of Claims concluded "that the sale of religious literature was the primary concern of plaintiff's activities. We further conclude that the sale of these materials, however religiously inspired, involved the plaintiff directly in the conduct of a trade or business for profit. * * * In summary, we are compelled to reach a conclusion that plaintiff's activities are of a nonexempt character. We find that the crucial factor, in the light of the evidence, is that the sales aspect of plaintiff's work looms so large as to overshadow all else."

REASONS FOR GRANTING THE WRIT

As the court below noted, "There is unfortunately no case law on the point as to whether a religious publishing house, lacking denominational ties, merits tax exempt status." But in attempting to establish a precedent in this landmark case, the Court of Claims has utilized principles in direct conflict with the plain terms of the Internal Revenue Code and with the pertinent decisions of this Court and of other appellate tribunals. Confusion has thus been created as to the proper standards to be applied in determining whether a religious publishing organization is exempt from taxation by virtue of its religious or educational purposes. And the tax-exempt status heretofore enjoyed by innumerable religious and educational publishing ventures has been thrown into critical jeopardy. The invocation of this Court's review powers is thus both appropriate and essential.

(A) The standards heretofore applied

Heretofore it has been clear that the focal point of any inquiry into the exempt status of a religious or educational organization was the existence of exclusively religious or eductional "purposes." Section 101(6) of the 1939 Code, in effect during the taxable year in question, and Section 501(c)(3) of the 1954 Code, applicable to all subsequent tax years, both provide in identical terms that nonprofit corporations "organized and operated exclusively for religious . . . or educational purposes" are exempt from income taxation. There is nothing in these statutory words indicating that an exemption is unavailable simply because the corporation engages in substantial or profitable publishing activity, so long as that activity is related to, or a part of, an exempt purpose.

Hence the relevant thrust of the statutory exemption is in terms of the religious or educational *purposes* of the organization and the dedication of its activities as well as the destination of its funds to these purposes. In dealing with identical language in an earlier tax statute (Act of Oct. 3, 1913, 38 Stat. 172, 180), this Court said in *Trinidad* v. *Sagrada Orden*, 263 U.S. 578, 581 (1924):

> "First, it recognizes that a corporation may be organized and operated exclusively for religious, charitable, scientific or educational purposes, *and yet have a net income. Next, it says nothing about the source of the income, but makes the destination the ultimate test of exemption.*
>
> "Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain. Such activities cannot be carried on without money; and it is common knowledge that they are largely carried on with income received from properties dedicated to their pursuit. This is particularly true of many charitable, scientific and educational corporations and is measurably true of some religious corporations. Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted." [Emphasis added.]

This statement has never been repudiated by this Court as the basic guideline to the religious-educational exemption.

The purpose or destination test has been followed in pertinent Treasury Regulations[1] and by the decisions of this Court and other tribunals. Thus in *Better Business Bureau* v. *United States*, 326 U.S. 279, 283 (1945), in referring to identical language under the Social Security Act, the Court recognized this standard in its reference to the fact that "to fall within the claimed exemption, an organization must be *devoted to educational purposes* exclusively." [Emphasis supplied.] And in *Commissioner* v. *Orten*, 173 F. 2d 483, 486 (C.A. 6, 1949), the court said:

> "A business does not operate in vacuo—it is related to some objective. With the ordinary business men it is run for profit and the profit serves his need. Here the business . . . produced profits to be plowed back into furtherance of research and study."

Indeed, the Court of Claims itself has previously recognized the applicability of the destination test, stating in *Sico Company* v. *United States*, 121 Ct. Cls. 373, 389, 102 F. Supp. 197, 199 (1952):

> "It is sufficient to say that the great weight of authority on the question presented is to the effect that . . . the exemption from taxation granted by the statutes makes the destination of the income, that is, the purpose and object to which it is devoted, rather than its source, the ultimate test of its exemption."

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[1] Treas. Regs. § 1.501(c)(3)-1(c)(1) reads in pertinent part: "An organization may meet the requirements of § 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in § 513. In determining the existence or non-existence of such primary purpose, all the circumstances must be considered, including the size and extent of the activities which are in furtherance of one or more exempt purposes . . ."

Certain other statutory criteria are involved in evaluating the availability of this type of exemption. *While those criteria in some respects modify the destination concept, they do not destroy it or render it inapplicable to those organizations whose purposes are truly and exclusively exempt in nature.* Thus, as the *Better Business Bureau* case demonstrates, the exempt purpose or destination must be exclusive in nature; the presence of a single nonexempt purpose, if substantial in nature, will destroy the exemption. And if an otherwise exempt organization engages in a commercial business activity unrelated to its exempt purpose, that activity is subject to tax. Moreover, Congress has decreed that corporations engaged in activities ordinarily carried on by commercial concerns and in competition therewith are not exempt from taxation even though the profits are fed to other exempt corporations or used for otherwise exempt purposes.[2]

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[2] Thus Congress in 1950 amended the 1939 Code, by adding § 301(a) and (b) thereof, so as to provide that (1) a so-called "feeder corporation" operated for the primary purpose of carrying on a trade or business for profit shall not be exempt on the ground that its profits are payable to one or more exempt organizations, and (2) any portion of the income of an exempt organization derived from its conduct of a commercial trade or business shall be taxed—a tax known as "Supplement U"—at ordinary corporate rates.

In enacting these amendments, Congress clearly had in mind those organizations that in some manner are "in direct competition with other taxable businesses," imposing taxes so as to protect the latter businesses "against this unfair competitive situation." See S. Rep. No. 2375 (81st Cong., 2d Sess. 1950) and H. Rep. No. 871 (78th Cong., 1st Sess. 1942).

In the instant case, of course, the Court of Claims found (Finding No. 55) that there is no substantial evidence that any commercial printing companies operating for profit produce and sell Sunday School materials comparable to those of petitioner, or engage in any religious educational programs.

But where, as here, the organization is devoted exclusively to religious or educational purposes, where all of its activities are related to those purposes, and where no commercial competition is involved, the exemption as decreed by Congress is plainly available. Such was the accepted state of the law prior to the decision below.

(B) The confused standards applied below

The Court of Claims, in conflict with the destination concept and in contravention of its own findings, ignored the exclusively religious and educational nature of all of petitioner's activities. Instead it conceived the decisive issue to be whether the selling of religious literature was a primary or subordinate activity of petitioner. Having concluded that this activity was primary in nature,[3] the court further concluded "that the sale of these materials, however religiously inspired, involved the plaintiff [petitioner] directly in the conduct of a trade or business for profit."

The court thus held petitioner not entitled to a tax exemption despite the court's own findings that (1) the petitioner's business of preparing and selling Sunday School literature and materials to religious organizations is not one ordinarily carried on for profit, there being no competition in such activity from commercial

[3] The court's conclusion that the accumulated capital and surplus resulting from sales of religious literature "looms so large as to overshadow" the expenditures for instructional activities overlooks the facts of record demonstrating that such expenditures from 1951 to 1957 totalled some $1,656,000 (including the expenditure for cash donations, merchandise grants and the headquarters building). That leaves an accumulated surplus of only $590,000, which surplus is irrevocably dedicated to exempt purposes. See paragraph (17), p. 11, *supra*, of the Statement of the Case.

printing companies,[4] (2) all of the profits from such business, accumulated or spent, are devoted to the fundamental purpose of improving Sunday Schools by providing better teaching materials and by providing educational facilities for ministers, teachers and religious leaders, and (3) the petitioner has in fact made substantial contributions to the growth and development of Sunday Schools in the United States.

In the light of such factual findings, the mere fact that petitioner made profits, even substantial profits, from its publishing activity is not enough to deny exemption. Those findings make clear that the so-called primary activity—the preparation, publication and selling of religious literature for use in Sunday Schools and churches—involves matters closely associated with and indeed part of the demonstrated religious purposes of petitioner. And such activity does not involve petitioner in competition with ordinary commercial concerns. See *Forest Press, Inc.* v. *Commissioner*, 22 T.C. 265 (1954); *Saint Germain Foundation* v. *Commissioner*, 26 T.C. 648, 658 (1956). In these circumstances, the amount or primacy of the publishing and selling activities becomes irrelevant.

Thus, in a situation where selling activities have no commercial connotation and result only in expenditures and accumulations for religious purposes, the Court of Claims has repudiated the destination or purpose

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[4] The reference in footnote 11 of the court's opinion to the fact that many commercial concerns sell Bibles and other religious literature is irrelevant. Petitioner's sales were almost exclusively of a self-created Sunday School instruction nature of no attraction to the general public. Almost all of petitioner's sales were to Sunday Schools. Finding No. 47. Competition in such sales is solely from tax-exempt denominational publishing concerns. Finding No. 55.

test. In complete disregard of the fact that petitioner accumulates and spends nothing save for religious or educational purposes, the court has held those purposes meaningless for purposes of tax exemption. The result is to render it impossible for an organization like the petitioner to finance its exclusively religious purposes by engaging in non-commercially competitive publishing activities. The Court of Claims decision would force organizations such as petitioner to either donate or sell at a loss all of their publications. Such a result not only confuses and confounds the basic standard for applying § 101(6) of the 1939 Code and § 501(c)(3) of the 1954 Code but directly conflicts with the Congressional mandate as interpreted by this Court in the *Trinidad* case.

A restatement and clarification of that mandate therefore become appropriate. Not since the *Trinidad* decision was rendered some 37 years ago has this Court had occasion to consider this problem, and it has never done so with reference to the more recent Internal Revenue Codes. Nor has there ever been a definitive determination of the impact of the destination standard on religious publishing concerns, either of a denominational or non-denominational variety. The confusion created by the decision below ripens the need for such a determination.

(C) The impact of the decision below

A prime purpose of the Congressional desire to exempt from taxation those nonprofit corporations organized and operated exclusively for religious purposes was to aid religious publishing concerns such as petitioner. The exemption originated in § 38 of the Revenue Act of 1909, 36 Stat. 11, 112, and was introduced as a floor amendment in the Senate, 44 Cong. Rec. 4149.

The background and purpose of this provision were plainly stated by its author, Senator Bacon (44 Cong. Rec. 4151):

> "I will say to the Senator from Wyoming and to the Senate . . . that the corporation which I had particularly in mind as an illustration at the time I drew this amendment is the Methodist Book Concern, which has its headquarters in Nashville, which is a very large printing establishment, and in which there must necessarily be profit made, and there is a profit made exclusively for religious, benevolent, charitable, and educational purposes, in which no man receives a scintilla of individual profit."

As a result of this Congressional mandate, all of the denominational publishing houses in the United States have been ruled tax-exempt by the Commissioner of Internal Revenue.[5] See Finding No. 55. And all of them are engaged *primarily* in the business of creating, publishing and selling religious literature *at a profit* to their respective churches, church organizations and Sunday Schools. These publishing houses differ from petitioner mainly only in their control by, and relationship to, particular denominations—a factor of no statutory relevance to the availability of a tax exemption; nor do they carry on free religious instructional activities to the extent that petitioner does.

If the rationale of the Court of Claims be applied to these denominational publishing concerns, their tax-exempt status must be withdrawn. Ignoring the reli-

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[5] One of the largest of these is the Methodist Printing Home of Cincinnati, Ohio, the income of which supports the pension fund of Methodist ministers. Finding No. 55. The evidence of record shows that the sales and profit accumulations of many of the denominational concerns are equal to or substantially greater than petitioner's.

gious purpose to which their activities and funds are directed, so goes the reasoning, the primary activity of these corporations is the sale of religious literature for a profit—an activity which, "however religiously inspired, involved the . . . [denominational publishers] directly in the conduct of a trade or business for profit." Thus would the principal desired purpose of Congress in originally enacting the provision in question be frustrated. So serious a consequence, one that flies in the face of both the will and the language of the legislative draftsmen, certainly deserve the full consideration of this Court.

Moreover, the impact of the decision below does not stop with denominational publishing houses. For if non-denominational publishers such as the petitioner are to be denied exemption, then all other independent publishers devoted exclusively to educational, literary, and scientific purposes must likewise yield their present exemptions. Chief among these would be the National Geographic Society, organized in 1888 as an independent organization that performs the same type of operation in the science and geography field that petitioner does in the religious educational field.[6] The Society

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[6] The Trial Commissioner refused to admit evidence regarding the National Geographic Society and its tax-exempt status. See Petitioner's Exhibits 56(1)-(7). But all the proferred information is a matter of public record in the form of the Society's Annual Information Return on Form 990A, available each year for public inspection. Like petitioner, the Society is independent of any other organization, has a self-perpetuating board of directors (its members have no say in the management of the Society and dues paid by members are in reality solely for the subscription price of the magazine), accumulates substantial income from sales of publications (over $30,000,000 as of 1956), has constructed its own building from accumulated receipts, and has made a significant contribution within its specialized exempt field.

publishes and distributes to its members magazines and literature of a scientific nature and does so for a profit, all of which is accumulated or spent for scientific and educational purposes. For years it has been exempt under the same provisions of the Code as are involved in this case. Yet the ruling below places that exemption in grave jeopardy.

The serious consequences that can flow from an application of the decision below to many other nonprofit publishing corporations similar to the petitioner serve to underscore the importance of the question presented and the need for a definitive resolution thereof by this Court.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari to the Court of Claims should be granted.

Respectfully submitted,

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October 17, 1961

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 115–56

(Decided January 18, 1961)

SCRIPTURE PRESS FOUNDATION

v.

THE UNITED STATES

ROBERT V. SMITH for the *plaintiff*. R. P. SMITH, J. W. KIERNAN and SMITH, RISTIG & SMITH were on the brief.

GEORGE WILLI, with whom was ASSISTANT ATTORNEY GENERAL CHARLES K. RICE, for the *defendant*. JAMES P. GARLAND and LYLE M. TURNER were on the brief.

Opinion

JONES, *Chief Judge*, delivered the opinion of the court:

Plaintiff is the successor of a corporation known as Scripture Press, Inc., organized in 1932 as a profit corporation under Illinois law. In May 1945, the stock of Scripture Press, Inc., was donated by its stockholders to plaintiff, Scripture Press Foundation, and Scripture Press, Inc., was then liquidated into plaintiff.

Plaintiff was organized on May 5, 1945, as a nonprofit, nonstock corporation, pursuant to the "General Not for Profit Corporation Act" of the State of Illinois. Following application by the plaintiff, the Commissioner of Internal Revenue issued a ruling in 1946 declaring plaintiff to be exempt from Federal income tax under the provisions of

§ 101(6) of the Internal Revenue Code of 1939, as amended,[1] on the ground that the plaintiff was organized and operated exclusively for religious purposes.

On December 31, 1953, the Chief, Exempt Organizations Branch, Office of the Commissioner of Internal Revenue, issued a ruling that plaintiff beginning with the fiscal year ended January 31, 1953, and for subsequent years, was not exempt from Federal taxes. Thereafter, plaintiff timely filed on March 18, 1955, corporate tax returns for the taxable years ended January 31, 1953, and January 31, 1954, reporting net taxable income for those years of $18,827 and $18,544, respectively, as representing profits from store operations and paid taxes for those years of $5,648.10 and $5,563.20, respectively. Plaintiff reported its store operations as taxable on the ground that amounts realized on these operations might be, although the plaintiff does not so admit, considered unrelated business as defined in §§ 421 [2] and 422 [3] of the Internal Revenue Code of 1939, as amended by the Revenue Act of 1950, more particularly defined as Supplement U Net Income.

Thereafter, plaintiff duly filed claims for refund for taxes so paid. As no action was taken by the Commissioner of Internal Revenue with regard to these claims, plaintiff filed suit in this court to recover these taxes. Subsequently, deficiency assessments were made by the Commissioner of Internal Revenue, assessing taxes for 1953 at $153,058.48 and

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[1] Section 101(6) of the Internal Revenue Code of 1939, 53 Stat. 33, as amended by § 301(c)(1), Revenue Act of 1950, 64 Stat. 906, 953, and by § 314(b)(1), Revenue Act of 1951, 65 Stat. 452, 492.

[2] As added by § 301(a), Revenue Act of 1950, 64 Stat. 906, 948, and amended by § 201(d), Excess Profits Tax Act of 1950, 64 Stat. 1137, and §§ 121(e) and 339(a), Revenue Act of 1951, 65 Stat. 452.

[3] As added by § 301(a), Revenue Act of 1950, 64 Stat. 906, 948.

for 1954 at $173,039.63. Plaintiff paid the additional assessment of $147,410.38 for 1953, filed a timely claim for refund, supplementing the prior claim for the same year, which claim was denied by the Commissioner of Internal Revenue. Consequently, plaintiff amended its original petition to this court to include the payment of the additional assessment for the year 1953, requesting recovery of taxes for 1953, totaling $159,588.18, including interest paid, plus interest thereon. Plaintiff has elected to present its petition against the deficiency assessment for the 1954 fiscal year in the Tax Court of the United States.

All issues concerning the amounts of taxes, if any, to which plaintiff might be entitled to have refunded have been reserved for future proceedings. The only issues now before the court are as follows: (1) Is plaintiff entitled to exemption from Federal income taxes under § 101(6) of the Internal Revenue Code of 1939 and § 501(c)(3)[4] of the Internal Revenue Code of 1954? (2) If the plaintiff is so exempt, is any part of its activities subject to unrelated business tax under § 421 of the Internal Revenue Code of 1939 and under § 512[5] of the Internal Revenue Code of 1954?

The first issue which we must resolve is whether plaintiff is exempt under § 101(6)[6] of the 1939 Code and the equiva-

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[4] 68A Stat. 163.

[5] 68 A Stat. 170.

[6] Section 101(6) of the Internal Revenue Code of 1939, 53 Stat. 33, 26 U.S.C. § 101(6) (1952 ed.), as amended by § 301 (c)(1), Revenue Act of 1950, 64 Stat. 906, and by § 314(b)(1), Revenue Act of 1951, 65 Stat. 452, 492, reads as follows:

"EXEMPTIONS FROM TAX ON CORPORATIONS

"Except as provided in paragraph (12)(B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

* * * * *

"(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious,

lent provision in the 1954 Code, § 501(c)(3)[7]. The plaintiff contends with considerable force that the single and overwhelmingly dominant motif of its activities is the betterment of the Protestant Sunday Schools of America. In other words, plaintiff asserts that it is "operated exclusively" for a religious purpose under § 101(6). The defendant contends with equal vigor that plaintiff's purpose is the preparation and sale of religious literature, and that it is therefore not "operated exclusively" for religious and charitable purposes. The defendant asserts that the sale of religious literature is not an activity which qualifies for tax exemption.

Before we inquire into the tax significance of plaintiff's activities, we think it pertinent to discuss the background of plaintiff's founders. The dominant personalities behind plaintiff and its predecessor, Scripture Press, Inc., were Mr.

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charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814; * * *"

[7] The successor to § 101(6) of the Internal Revenue Code of 1939 is § 501(c)(3) of the Internal Revenue Code of 1954, 68A Stat. 163, which reads as follows:

"(c) LIST OF EXEMPT ORGANIZATIONS.—

* * * * *

"(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

and Mrs. Victor Cory. Until 1925, Mr. Cory had been an electrical engineer. In that year, he and Mrs. Cory agreed to act on their deep interest in religion. Mr. Cory went to work for a religious publishing company. Gradually, Mr. Cory became concerned with what he regarded as the poor quality of existing teaching materials for Bible instruction in Sunday schools. Therefore in 1932, Mr. Victor Cory, his wife, Bernice, and others, organized Scripture Press, Inc., devoted to the preparation and sale of religious literature. Scripture Press, Inc., was succeeded by the plaintiff. The plaintiff, like its predecessor, has enjoyed a steadily increasing rate of sales over the years. The plaintiff is not connected with any particular religious denomination or church.

There is unfortunately no case law on the point as to whether a religious publishing house, lacking denominational ties, merits tax exempt status. However, there are cases involving publishing houses which are instructive. Counsel for both sides cite us to *Forest Press, Inc.* v. *Commissioner*, 22 T.C. 265 (1954). Forest Press was organized to prepare and publish a widely accepted system for indexing library collections, the Dewey Decimal Classification System. Forest Press sought exemption under the provisions of § 101(6) of the Internal Revenue Code of 1939. The Commissioner of Internal Revenue asserted that Forest Press was engaged in a commercial publishing enterprise and was consequently neither organized nor operated exclusively for scientific, literary, or educational purposes within the meaning of § 101(6).

The Tax Court declared Forest Press exempt. The defendant urges that any comparison between Forest Press and the plaintiff can only serve to point up the nonexempt nature of plaintiff's activities. The defendant asserts that in *Forest Press* the publications were priced to recover manufacturing cost plus enough to sustain the small staff of seven to ten persons working for the corporation.

The defendant distinguishes *Forest Press* from the plaintiff by comparing the slight profits realized by the former

with the very substantial profits realized by the latter. If the defendant seeks by this distinction to suggest that where an organization's profits are very large a conclusion that the organization is noncharitable must follow, we reject such a suggestion. If, however, defendant means only to suggest that it is at least some evidence indicative of a commercial character, we are inclined to agree.

Another case that is helpful, and perhaps more directly in point, is *Saint Germain Foundation* v. *Commissioner*, 26 T.C. 648 (1956). In that case, the petitioner, the Saint Germain Foundation, sought to qualify as an organization exempt from Federal income tax under § 101(6) of the 1939 Code. The Saint Germain Foundation was organized for the purpose of propagating the teachings of the "I Am" Religious Activity. The similarity between *Saint Germain* and the instant case arises from the fact that some religious literature was sold in connection with Saint Germain's activities. The Government argued that the Saint Germain Foundation received income from the sale of religious publications and charged fees at its annual conclaves. The Government contended in *Saint Germain* that these income-producing activities showed that the petitioner was not "operated exclusively" for religious purposes. The Tax Court did not subscribe to the Government's position in that situation and said on p. 658:

> The sale of religious literature and the conclaves held to propagate the precepts of the petitioner are activities closely associated with, *and incidental to*, the religious purposes of the petitioner. Such activities bear an intimate relationship to the proper functioning of the petitioner, and we do not believe that income received from these activities prevents the petitioner from being an organization organized and operated "exclusively" for religious purposes within the meaning of section 101(6). *Squire* v. *Students Book Corp.*, 191 F. 2d 1018; *Trinidad* v. *Sagrada Orden de Predicadores*, 263 U.S. 578. [Emphasis supplied.]

We believe the *Saint Germain* case suggests, at least inferentially, the test for decision in this case: was the sale of religious literature by the plaintiff in this case *incidental* to the plaintiff's religious purposes? Or were plaintiff's religious objectives incidental to the sale of religious literature? Apparently the plaintiff is convinced, as we are, that decision in this case will hinge on the answer to this question. Thus, plaintiff asserts that its fundamental objective is to stimulate the growth of the Sunday schools in the United States. The plaintiff asserts that its work toward this end comprises several phases. One phase is the plaintiff's Editorial Division which has the responsibility for preparing and disseminating the Sunday School lesson material. Another phase is the Christian Relations Department which does door-to-door evangelism. The plaintiff describes in its brief the final phase of its work—the Instructional Department—as follows:

> The most important phase, however, towards effecting this objective is performed by the Instructional Department, * * * free instructional work is provided without promoting the sale of Plaintiff-produced material, but with the primary objective * * * "to inspire, improve, instruct" for the purpose of making better and more informed Sunday School teachers and Church leaders.

We think that plaintiff's assertion that its instructional activities are more important to plaintiff than its selling activities is entirely sincere. The evidence in this case, as is amply borne out by the findings of the trial commissioner, shows that throughout its history Scripture Press has been led by people of devout and intense religious conviction. However, the intensity of the religious convictions of the plaintiff's members and officers cannot operate to exempt them from the tax law if the activities of the plaintiff cannot in themselves justify such an exemption. Piety is no defense to the assessments of the tax collector.

In our finding 49, the trial commissioner reflects the total costs incurred by the plaintiff for its instructional work at

Sunday school meetings and conventions and other sessions. The plaintiff vigorously argues that its primary interest was to better the Sunday schools of America by improving both the quality of instruction and the materials used in those schools. The instructional aspect of this endeavor involved outlays of monies by the plaintiff. The betterment of the lesson material used resulted in income to the plaintiff as a result of the sale of these materials. We think it is fair in making a determination as to what was the most important aspect of plaintiff's work to compare how much plaintiff accumulated as a result of its sale of religious literature and how much it expended for instructional activities.

	Expenditures [8] *for Religious Educational Programs*	*Accumulated* [9] *Capital & Surplus*
1951	$21,835.67	$476,311.14
1952	29,434.83	585,016.10
1953	36,452.08	744,798.26
1954	41,454.42	982,580.70
1955	46,378.63	1,188,629.17
1956	48,041.44	1,468,892.42
1957	72,886.27	1,610,817.30

We think the enormity of the contrast between what plaintiff has accumulated from sales each year and what it has expended for its educational programs reveals that the sale of religious literature is its primary activity and that its

[8] These amounts are set out in our finding 49. The gross income and total expenditures are set out in finding 48. This finding will show the very small role expenses for religious education occupied in the whole picture of the taxpayer's total expenses.

[9] The accumulated capital and surplus figures for each year are obtained by totaling the annual accumulated earnings and capital fund amounts set out in Table III in the trial commissioner's findings. See our finding 51.

instructional phase is incidental thereto. It is true that plaintiff erected a new building in Wheaton, Illinois, at a total cost in excess of $1,000,000 in 1956. Even allowing for the cost of the building, however, the disparity between amounts actually expended for instruction when compared with amounts realized in earnings is unaccountably small.[10]

The test we have developed from the *Saint Germain* case was first suggested by the Supreme Court in *Trinidad* v. *Sagrada Orden,* 263 U.S. 578 (1924). In *Trinidad,* the Court was concerned with construing paragraph G(a) and M of § II of the Act of October 3, 1913, 38 Stat. 172, 180, a predecessor of § 101(6) of the Internal Revenue Code of 1939. The defendant contended that the plaintiff, a Philippine corporation, was not "operated exclusively" for religious purposes because it used its properties to produce income, and traded in wine, chocolate, and other articles. The Court's characterization of this argument has significance here; the Court said at p. 581:

> In effect, the contention puts aside as immaterial the fact that the income from the properties is devoted exclusively to religious, charitable and educational purposes, and also the fact that the *limited trading,* if it can be called such, is purely incidental to the pursuit of these purposes, and is in no sense a distinct or external venture. [Emphasis supplied.]

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[10] On this point—the significance of the large amounts aggregated by the plaintiff—the remarks of the United States Court of Appeals for the Ninth Circuit in *Randall Foundation* v. *Riddell,* 244 F. 2d 803 at 807 (9th Cir. 1957), a case not directly in point on the facts but nonetheless involving a construction of § 101(6), are certainly opposite:

"It is not our intention to say that a case can never be made out on the facts of a particular situation for aggregation of funds by a corporation for ultimate disposition to a charitable purpose. But a corporation which in its inception engages in trade, business * * *, and only has a vague charitable design, does not in our opinion come within the terms of the statute."

In the language quoted above in *Trinidad*, the Supreme Court emphasizes that the taxpayer's activities were "limited" and "purely incidental" to the pursuit of its religious activities. We think the *Trinidad* case reflects the view that in these cases what is dispositive is whether the business activities of the taxpayer are incidental to its charitable objectives or whether, in fact, the converse is true.

We note that the Court said again at p. 582:

> As respects the transactions in wine, chocolate and other articles, we think they do not amount to engaging in trade in any proper sense of the term. It is not claimed that there is any selling to the public or in competition with others. The articles are merely bought and supplied for use within the plaintiff's own organization and agencies,—some of them for strictly religious use and the others for uses which are purely incidental to the work which the plaintiff is carrying on. *That the transactions yield some profit is in the circumstances a negligible factor. Financial gain is not the end to which they are directed.* [Emphasis supplied.]

Can it be said of plaintiff's competitively-priced lesson material that financial gain was not the end to which its sale was directed? Can the impressive earnings which sale of the lesson materials has brought the plaintiff be said to be incidental to plaintiff's primary work? We think the answer to both these questions is in the negative. Weighing the cases discussed, and analyzing them for the implications they contain for solution of the case at bar, we conclude that the sale of religious literature was the primary concern of plaintiff's activities. We further conclude that the sale of these materials, however religiously inspired, involved the plaintiff directly in the conduct of a trade or business for profit.[11]

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[11] At this point it should be remembered that there are many commercial concerns which sell Bibles, scrolls, and other religious and semi-religious literature which have not been granted exemption as to that part of their businesses.

Plaintiff has not argued that if it does not qualify for exemption solely as a religious foundation, it qualifies for exemption as an educational foundation. However, we believe that a theory that plaintiff is exempt as an "educational" organization within the meaning of § 101(6) is subject to the same defects inherent in the position that plaintiff's dominant purpose was religious in character. We think the plaintiff could not make a showing that its *primary* purpose was educational any more than it was able to make a showing that its *primary* purpose was religious. In *Better Business Bureau* v. *United States*, 326 U.S. 279, 283 (1945), the Court was presented with the question as to whether the Better Business Bureau of Washington, D.C., Inc., was exempt from social security taxes as a corporation organized exclusively for scientific or educational purposes within the meaning of § 811(b)(8) of the Social Security Act, 49 Stat. 620, 639. Section 811(b)(8) of the Social Security Act repeats almost *in haec verba* the language of § 101(6) of the Internal Revenue Code of 1939. The Court there held that the petitioner was not exempt from Social Security taxes. The Court said at p. 283:

> In this instance, in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. *This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.* It thus becomes unnecessary to determine the correctness of the educational characterization of petitioner's operations, it being apparent beyond dispute that an important, if not the primary, pursuit of petitioner's organization is to promote not only an ethical but also a profitable business community. [Emphasis supplied.]

We think the sales activities of plaintiff reflect "a noneducational purpose" and are not only "substantial in nature" but preponderate.

There is yet another facet to this case. The defendant argues that if the plaintiff should dissolve, it is possible for its earnings to be distributed to private persons, or for use for noncharitable ends. This of course is meant to suggest the possibility of inurement to private persons of the net earnings of the plaintiff, which is specifically prohibited by § 101(6). The defendant relies on the case of *Scripture Press Foundation* v. *Annunzio*, 414 Ill. 339, 111 N.E. 2d 519 (1953), wherein the Supreme Court of Illinois held that plaintiff was not exempt as a charitable foundation under § 2(f)(6)(g) of the Illinois Unemployment Compensation Act, Ill. Rev. Stat. 1949, ch. 48, par. 218. Central to the Illinois court's determination that plaintiff was not a charitable foundation was the fact that there was nothing to prevent the foundation, upon dissolution, from disposing of the assets in any manner it chose. Plaintiff responds that this charge no longer carries with it any merit because it has since amended its charter by adding to its articles of incorporation a provision that on dissolution its assets shall go to such "religious, charitable, scientific, literary, or educational organizations, no part of the net earnings of which inures to the benefit of any private shareholder or individual * * * as the Board of Directors in their absolute discretion, may determine * * *."

Defendant's rejoinder to plaintiff's argument that on dissolution the Foundation will distribute its assets to charities is that the situation respecting amendment in plaintiff's bylaws is precisely as it was at the time when those bylaws were under consideration by the Supreme Court of Illinois. Plaintiff's articles of incorporation contain nothing, defendant urges, preventing further amendment to eliminate the provision respecting dissolution added May 20, 1954.

The possibility of inurement is of course raised by the opportunity for further amendment in plaintiff's bylaws. We very much doubt whether at least the present officers and members of the plaintiff would so move to amend.

Therefore, we have not regarded this aspect of the case as in any way determinative.

A final matter remains to be considered. The plaintiff contends that the Commissioner of Internal Revenue was without authority to revoke the plaintiff's exempt status previously granted in 1946. Apparently plaintiff's theory is that once the Commissioner of Internal Revenue has issued a ruling he is forever precluded from revoking it. Plaintiff has adduced no authority to support this contention. We know of no limitation on the Commissioner of Internal Revenue precluding him from revoking plaintiff's exempt status in 1953 because he found then, as we find now, that plaintiff did not come within the meaning of § 101(6). See *Automobile Club* v. *Commissioner*, 353 U.S. 180 (1957). Consequently, we think there is no merit in plaintiff's position on this point.

Since we find that Scripture Press Foundation's activities do not warrant tax exemption, we do not reach the issue as to whether any single part of those activities are subjected to Unrelated Business Tax under the provisions of § 421 of the Internal Revenue Code of 1939, as amended, and under the provisions of § 512 of the Internal Revenue Code of 1954.

In summary, we are compelled to reach a conclusion that plaintiff's activities are of a nonexempt character. We find that the crucial factor, in the light of the evidence, is that the sales aspect of plaintiff's work looms so large as to overshadow all else.

Therefore, plaintiff's petition will be dismissed.

It is so ordered.

DURFEE, *Judge;* LARAMORE, *Judge;* MADDEN, *Judge;* and WHITAKER, *Judge*, concur.

Findings of Fact

The Court, having considered the evidence, the briefs and argument of counsel, and the report of Trial Commissioner Roald A. Hogenson, makes the following findings of fact:

1. Plaintiff was organized on May 5, 1945, as a non-profit, non-stock corporation, pursuant to the "General Not For Profit Corporation Act" of the State of Illinois, approved July 17, 1943. Its principal office at the time of the filing of its original petition was at 434 South Wabash Ave., Chicago, Illinois. In November 1956 plaintiff moved its headquarters to 1825 College Avenue, Wheaton, Illinois.

2. In its original petition filed March 6, 1956, plaintiff claimed refund of Federal income tax and interest payments of $12,177.80 made on or about March 18, 1955, for its fiscal years ended January 31, 1953 and 1954.

On March 15, 1957, prior to the trial of this case, the Commissioner of Internal Revenue mailed plaintiff a 90-day letter containing notice of deficiencies of Federal income taxes in the sums of $147,410.38 for the fiscal year ended January 31, 1953, and $167,476.43 for the fiscal year ended January 31, 1954. This notice was received by plaintiff on March 18, 1957.

On May 9, 1957, plaintiff paid under protest the $147,410.38 covering the deficiency assessment for the fiscal year ended January 31, 1953. On July 10, 1957, plaintiff filed its first amendment to its petition in this case, by which it increased its claim for judgment to the sum of $159,588.18 by including the payment of $147,410.38 of additional taxes for the 1953 fiscal year. Plaintiff has elected to present its petition against the deficiency assessment for the 1954 fiscal year in the Tax Court of the United States.

3. By stipulation of the parties, approved by the trial commissioner of this court, the only issues now before the court are as follows: (1) Is plaintiff entitled to exemption from Federal income taxes under Section 101(6) of the

Internal Revenue Code of 1939 and Section 501(c)(3) of the Internal Revenue Code of 1954. (2) If the plaintiff is so exempt, is any part of its activities subject to unrelated business tax under Section 421 of the Internal Revenue Code of 1939, as amended, and under Section 512 of the Internal Revenue Code of 1954. All issues pertaining to the amount of recovery, if any, have been reserved for future proceedings.

At the outset of the trial of this case, the attorneys for the parties agreed that the entire period of plaintiff's operations, before, during, and after the tax years in question, should be considered on the issues now presented.

4. Plaintiff's original articles of incorporation stated that it was incorporated for perpetual duration. Its incorporators were Victor E. Cory, Bernice T. Cory, and Harry G. Saulnier, who were designated as the first board of directors, which was to be comprised of three members. Regarding the purposes for which the corporation was organized, the articles provided as follows:

> The dissemination of the Gospel, the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities.
>
> The organization and support of organizations, institutions and movements exclusively devoted to Christian missionary, educational and other evangelical efforts.
>
> In connection with the foregoing to engage in:
>
> 1. The production, purchase, circulation, distribution, and sale of Christian literature, including books, periodicals, pamphlets, tracts, placards, mottos, and supplies; and
>
> 2. The conduct of publication and printing establishments.

5. Plaintiff's original bylaws, which have been amended only in the particulars hereinafter stated in this finding, provided in pertinent parts as follows:

ARTICLE I. ORGANIZATION

* * * * *

SECTION 2. *Purposes.* The purposes of this corporation are as stated in its Articles of Incorporation, namely: The dissemination of the Gospel, the distribution of the Scriptures, of extracts therefrom, of devotional and other literature relating thereto, and of helps and supplies for use in Christian activities; the organization and support of organizations, institutions, and movements exclusively devoted to Christian missionary, educational and other evangelical efforts; the production, purchase, circulation, distribution, and sale of Christian literature, including books, periodicals, pamphlets, tracts, placards, mottos, and supplies; and the conduct of publication and printing establishments.

Section 3. *Diversion of assets prohibited.* In no case shall the corporation distribute to its members, directors, or officers any of its income or any of its properties, provided, however, that it may pay to any members, officers, or directors, who shall render services for it, reasonable compensation for services actually rendered. No funds of the corporation shall be loaned to any member, officer or director.

* * * * *

ARTICLE II. MEMBERSHIP

Section 1. *Members.* The initial members of this corporation shall be subscribers to its Articles of Incorporation, namely: Victor E. Cory, Bernice T. Cory, and Harry G. Saulnier. Additional members shall be admitted from time to time on a two-third vote of the members at the times of their admissions. Members once admitted shall continue to be such until their death, disability, or resignation. All of the members shall be of one class, and each shall have one vote on all matters coming before the members' meetings.

* * * * *

ARTICLE III. BOARD OF DIRECTORS

Section 1. *Number of directors.* The initial Board of Directors shall consist of the three persons named in the Articles of Incorporation. Thereafter the number of directors shall continue to be three until a different number is fixed by amendment to these by-laws. Thereafter the Board of Directors shall be such number of persons, not less than three, as from time to time may be specified by these by-laws.

Section 2. *Election of directors.* The initial directors shall hold office until the next annual members' meeting. Thereafter the directors shall be elected at each annual meeting, and those elected shall hold office until the next annual meeting and until their successors are elected and shall have qualified. Vacancies occurring between annual meetings may be filled by the Board.

* * * * *

ARTICLE V. EXECUTIVES' ADVISORY COMMITTEE

Section 1. *Membership.* The Board of Directors shall provide for the organization of an Executives' Advisory Committee, which shall consist of the occupants of such executive positions as the Board may designate. Such Committee shall report quarterly to the Board of Directors as to the problems and activities of the corporation with its recommendations.

Section 2. *Procedure of Executives' Advisory Committee.* The Executives' Advisory Committee shall formulate its own rules of procedure, elect its own officers, and keep its own records. Action taken by it shall be subject to the approval of the Board of Directors and shall not be binding upon the corporations as against other persons unless and to the extent that it may be expressly concurred in by act of the Board of Directors or of some officer acting within the scope of the powers conferred upon him by these By-Laws or by resolution of the Board.

On August 28, 1947, Section 1 of Article III was amended retroactive to May 9, 1945, to provide that the board of directors consist of five persons.

The original bylaws provided in Section 1 of Article IV that the officers of the corporation would be a president, a vice president, a secretary, and a treasurer, any two of which offices, except those of president and vice president, could be occupied by the same person. On November 28, 1955, this section was amended to provide for such additional vice presidents, assistant secretaries, assistant treasurers, and other officers as the board of directors might from time to time deem advisable. Officers were elected annually by the board of directors.

6. By action of its board of directors, approved by the members of the corporation, plaintiff's original articles of incorporation were amended on January 29, 1954, to eliminate the organizational purpose of a printing establishment, which plaintiff never conducted, and the corporate purposes were then restated as follows:

> To use its funds exclusively for religious, charitable, scientific, literary, or educational purposes, so that no part thereof shall inure to the benefit of any member or individual having a personal and private interest in the activities of the corporation; and to make any gift or gifts to other corporations or associations organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net income of which inures to the benefit of any private shareholder or individual having a personal or private interest in the activities of the corporation; provided, no substantial part of the funds of the corporation shall be used to carry on propaganda, or otherwise influence legislation.
>
> To receive and maintain a fund or funds and apply the income and principal thereof to promote the dissemination of the Gospel, the distribution of the Scripture, of extracts therefrom, of devotional and other literature relating thereto, and of aids and supplies for use in Christian activities.
>
> To receive and maintain a fund or funds and apply the income and principal thereof to the maintenance and operation of classes, seminars, and schools in reli-

gious instruction, and the creation and establishment of scholarships in religious education.

To receive and maintain a fund or funds and apply the income and principal thereof to promote the organization and support and assist organizations, institutions, and movements exclusively devoted to Christian missionary, educational, and other evangelical efforts.

To take and hold by bequest, devise, gift, purchase, or lease, for any of its purposes, any property, real or personal, without limitation as to amount or value; to convey such property and to invest and reinvest any such property and any increase or income therefrom, and deal with and expand the income and principal of said corporation in such manner as in the judgment of its members or directors will best promote its objects.

To do any and all acts necessary in furtherance of its corporate objects aforesaid, such as the formulation, editing, purchase, circulation, distribution, and sale of Christian literature, including books, periodicals, pamphlets, placards, mottos, and supplies for Christian activities.

At the same time, the board of directors with the approval of the members of the corporation amended plaintiff's original articles of incorporation by adding the following article:

6. In the event of the dissolution of the corporation, after the payment or satisfaction of all the debts of the corporation, the remaining assets and funds of the corporation shall be conveyed or transferred to such religious, charitable, scientific, literary, or educational organization or organizations, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, as the Board of Directors in their absolute discretion, may determine and no funds or property shall be distributed among or revert to any member, officer, or director of this corporation.

No provision was contained in the original articles concerning distribution of plaintiff's assets in the event of dissolution.

7. The first meeting of plaintiff's board of directors and members was held May 9, 1945, at which time the bylaws were approved and adopted. William R. Thomas and Robert A. Walker were affirmed as additional members of the corporation and of the board of directors.

On the same day the board of directors elected Victor E. Cory as president, Bernice T. Cory as vice president, and Harry G. Saulnier as secretary, which positions they have held since that time. These persons were the incorporators of plaintiff and held the same offices in Scripture Press, Inc., the predecessor corporation hereinafter mentioned in this and subsequent findings. Mrs. Cory was also elected plaintiff's treasurer, but the duties were actually performed by a controller.

William R. Thomas was a director of the predecessor corporation and vice president of the Geographical Publishing Company of DeKalb, Illinois. He had assisted in financing the predecessor corporation in its early years of operation. Robert A. Walker had been in charge of sales of publications for the predecessor corporation and headed plaintiff's dissemination division.

The same officials and employees of the predecessor corporation continued similar duties for plaintiff.

At the annual meeting of the members and board of directors on January 10, 1958, the bylaws were amended to provide for not less than 3 nor more than 15 directors. The board then increased its membership from five to seven and appointed Casper Henning and Dr. Robert A. Cook as directors.

Mr. Henning was then a vice president and Chicago manager of Manufacturers Mutual Fire Insurance Company and chairman of the board of Pacific Garden Missions. He

had been the national treasurer of the Gideons for a number of years.

Dr. Cook had been previously elected as a vice president in charge of plaintiff's dissemination division, commencing in February 1957, succeeding Robert A. Walker. He is and has been an ordained minister since 1931, having graduated from Moody Bible Institute in 1930, received a bachelor of arts degree from Wheaton College in 1934, a bachelor of divinity degree from Eastern Baptist Seminary in 1939, and thereafter two doctors degrees in theology. He served as a minister in several churches from 1932 to 1948. In 1945 he became active in Youth for Christ International, and served from October 1948 to February 1957 as its president.

At the time of the trial of this case, plaintiff had a board of directors with seven members, with an authorized maximum of fifteen members.

8. On May 9, 1945, at their first meeting, the original members and directors recorded in their minutes that all of the stock of the predecessor corporation, Scripture Press, Inc., was being contributed to plaintiff, that as soon as possible, the business and assets of the predecessor corporation would be turned over to plaintiff, and that plaintiff would thereafter carry out the development and distribution of religious literature, and the organization of religious movements, particularly relating to Sunday schools, as an objective in itself, and not as a business for profit. Plaintiff's president was then authorized by resolution to vote the stock of the predecessor corporation in favor of liquidation of that company, and it was further resolved that plaintiff's officers devote all assets received in such liquidation to the furtherance of plaintiff's purposes.

The liquidation of the predecessor corporation was completed as of May 31, 1945, and plaintiff's functions continued thereafter.

9. In May 1945 plaintiff submitted its application to the Commissioner of Internal Revenue, claiming exemption from Federal income taxes under Section 101(6) of the Internal Revenue Code of 1939. It was submitted on Treasury Department Form 1023, entitled "Exemption Affidavit", and was executed by plaintiff's president. This printed form required information in specific categories, and as completed by plaintiff stated in pertinent parts as follows:

> 2. Is the organization the outgrowth or continuation of any form of predecessor? *Yes.* If so, state the name of such predecessor and the period during which it was in existence. *Scripture Press, Inc., existed from 1932 until this time. This Foundation has acquired all of the stock of Scripture Press, Inc. by contribution. That corporation is presently to be liquidated and this Foundation will take over all its assets.*
>
> 4. State briefly the specific purposes for which the organization was formed. (Do not quote from, * * *) *To promote religious education in all appropriate ways, especially through the circulation of religious literature and helps especially adapted to Church Schools.*
>
> 8. State all sources from which the organization's income is derived. *It is anticipated that income will be derived from the production and sale of Christian literature, particularly of literature adapted for Sunday Schools and Sunday School workers.*
>
> 10. State all the activities in which the organization is presently engaged. (Explain in detail, * * *) *At present the organization is merely holder of all the stock of The Scripture Press, Inc. However, that Corporation has for some years been publishing Sunday School helps, literature for Sunday School workers and devotional literature generally. This organization intends to take over these activities.*
>
> *Furthermore, The Scripture Press, Inc. has promoted and arranged, and this organization expects to promote and arrange, Sunday School workers' conferences and conventions.*

13. (*a*) For what purposes, other than in payment for services rendered or supplies furnished, are the organization's funds expended? *To the extent that they are not required for its own direct religious activities, this organization expects to devote its funds to the support of Christian missionary and evangelical movements.*

(*b*) If any payments are made to members or shareholders for services rendered the organization, attach a separate statement showing the amounts so paid and the character of the services rendered. *No payments made as yet. Two of the members will be full time salaried employees. Names and probable salaries are: Victor E. Cory $10,000 per year. Bernice T. Cory $6,000 per year.*

14. Does any part of the net income of the organization inure to the benefit of any private share' older or individual: *No.*

16. In the event of the dissolution of the organization, what disposition would be made of its property? *It would go to some appropriate organization or organizations for use in carrying on Christian and missionary activities.*

Plaintiff also submitted with this exemption affidavit copies of its charter and bylaws. Not having commenced operations, plaintiff could not submit a classified statement of receipts and disbursements and a statement of assets and liabilities, as required by the terms of the exemption affidavit.

10. By letter dated June 16, 1945, the Deputy Commissioner of Internal Revenue acknowledged receipt of plaintiff's application and therein advised plaintiff in pertinent part as follows:

> Rulings, of the Bureau with respect to the exempt status of corporations for Federal income tax purposes are based largely on the actual activities of the organization over a period of time sufficient to disclose clearly the method of operation and actual activities. Ac-

> cordingly, no ruling will be made at this time. If, after you have operated for a period of time sufficient to disclose clearly the method of operation you will submit an exemption affidavit, Form 1023, completely filled out, accompanied by the supporting documents specified therein, to the collector of internal revenue, further consideration will be given to your claim. In the absence of a ruling holding that you are exempt from Federal income tax, it will, of course, be necessary for you to file income tax returns as they become due with the collector of internal revenue for your district, who is being advised of this action.

Plaintiff did not file any Federal income tax return for its first year of operations, or for any part thereof. On July 16, 1946, a representative of plaintiff conferred with an official of Internal Revenue Service concerning submission of another exemption affidavit, and plaintiff was then allowed an extension of time to file a tax return.

11. On August 28, 1946, plaintiff submitted a new application for exemption from Federal income taxes on Treasury Department Form 1023, attaching its balance sheet as of May 31, 1946, and a statement of its operations for its first year ended on that date. Plaintiff also submitted its catalog and samples of its materials published for sale to Sunday Schools which elect to use them in religious education. The information submitted by plaintiff in the new exemption affidavit was substantially the same as submitted on the original application, including the fact that plaintiff was successor to Scripture Press, Inc.

12. Plaintiff's balance sheet as of May 31, 1946, as submitted to the Commissioner of Internal Revenue, is summarized as follows:

Assets

Cash on hand and in bank		$203.84
Accounts receivable		60,996.75
Inventories, consisting of lessons, lesson materials and catalog merchandise		95,572.17
Fixed assets, net of depreciation		29,304.63
Deferred charges		27,581.87
Other assets		5,664.93
Total assets		219,324.19

Liabilities

Accounts and notes payable		159,036.56
Accrued expense		13,220.99
Deferred income on sales		13,550.46
Total liabilities		185,808.01
Capital	$30,710.11	
Surplus	2,806.07	
		33,516.18
Total liabilities and capital		219,324.19

The capital of $30,710.11 represents the book value of net worth taken over from Scripture Press, Inc. The surplus of $2,806.07 represents the net income as reported from operations for the year ended May 31, 1946.

The assets include as a part of the deferred charges, $13,010.49 of prepaid publicity expense, and $8,675.27 of deferred expense for week day church school, and include in the item of other assets, $4,518.76 for tax claims against the defendant. Royalties in the sum of $9,418.03 are included in the liability item of accrued expense.

13. Plaintiff's operating statement for the year ended May 31, 1946, as submitted to the Commissioner of Internal Revenue, is summarized as follows:

Net sales (after returns and allowances)		$640,794.60
Less		
Cost of sales	$334,412.75	
Mdse. handling costs	77,323.81	
Distribution expenses	92,607.46	
Administrative & general expense	137,769.17	
		642,113.19
Net operating deficit		−1,318.59
Deduct		
Net foundation expenses	$834.75	
Sunday School conventions	1,485.97	
Contributions & appropriations to outside agencies for Christian work	1,822.46	
Other expense	115.81	
		$4,258.99
Sunday Magazine operations		748.56
Total of other deductions		5,007.55
Total loss from all functions		−6,326.14
Add: Proceeds from the sale of Sunday Magazine		9,132.21
Excess of income over expense		2,806.07

The credit of $9,132.21 from the sale of Sunday Magazine represents a credit to surplus as shown by the facts concerning such sale, hereinafter stated in findings 28 and 29. It does not represent income for the year ended May 31, 1946.

Plaintiff reported total expenditures for direct Christian work of $12,934.26, the major items of which are as follows: $834.75 allocable to planning Sunday school conventions, $1,485.97 for holding and assisting in programming meetings of Sunday school workers and teachers, $1,822.46 as contributions to religious organizations, and $8,675.27 for developing a curriculum for week day church schools. The last item is the deferred expense charge previously men-

tioned in finding 12. In supplying details on these expenditures for direct Christian work, plaintiff stated that it was not meant to infer that the other activities of plaintiff were not religious, but asserted that all of its activities and all of its expenditures were for religious purposes.

Of the $12,934.26 expended for direct Christian work, $4,258.99 was actually charged to plaintiff's operations during the year ended May 31, 1946, which sum represents less than 1 percent of its net sales.

Plaintiff's expense for the promotion of Christian literature for the year ended May 31, 1946, amounted to $60,092.25, which sum represented almost 10 percent of its net sales, not counting the additional prepaid publicity expense of $13,010.49. It was apparent that plaintiff expected to increase substantially its sales of Christian literature and allied materials in future operations.

14. By letter to plaintiff dated September 11, 1946, the Commissioner of Internal Revenue allowed plaintiff's application for tax exemption as follows:

> It is the opinion of this office, based upon the evidence presented, that you are exempt from Federal income tax under the provisions of section 101(6) of the Internal Revenue Code and corresponding provisions of prior revenue acts, as it is shown that you are organized and operated exclusively for religious purposes.
>
> Accordingly, you will not be required to file returns of income unless you change the character of your organization, the purpose for which you were organized, or your method of operations. Any such changes should be reported immediately to the collector of internal revenue for your district in order that their effect upon your exempt status may be determined.
>
> Furthermore, under substantially identical authority contained in sections 1426 and 1607 of the Code and/or corresponding provisions of the Social Security Act, the employment taxes imposed by such statutes are not

applicable to remuneration for services performed in your employ so long as you meet the conditions prescribed above for retention of an exempt status for income tax purposes.

Contributions made to you are deductible by the donors in arriving at their taxable net income in the manner and to the extent provided by section 23 (o) and (q) of the Internal Revenue Code as amended, and corresponding provisions of prior revenue acts.

Bequests, legacies, devises or transfers, to or for your use are deductible in arriving at the value of the net estate of a decedent for estate tax purposes in the manner and to the extent provided by sections 812(d) and 861(a)(3) of the Code and/or corresponding provision of prior revenue acts. Gifts of property to you are deductible in computing net gifts for gift tax purposes in the manner and to the extent provided in section 1004(a)(2)(B) and 1004(b) (2) and (3) of the Code and/or corresponding provisions of prior revenue acts.

15. Subsequent to this ruling, plaintiff was included on the official list of the Bureau of Internal Revenue of organizations exempt from taxes under Section 101(6) of the Internal Revenue Code of 1939. Contributions to such organizations are deductible by donors for Federal income tax purposes.

16. Plaintiff filed no annual information returns with the Commissioner of Internal Revenue because as an exempt religious organization, it was not required to do so.

17. On October 6, 1953, plaintiff received the following letter from the Chief of Section, Exempt Organizations Branch, Office of the Commissioner of Internal Revenue:

Reference is made to our ruling of September 11, 1946, holding you to be entitled to exemption from Federal income tax under the provisions of section 101 (6) of the Internal Revenue Code.

In view of recent changes in revenue legislation subsequent to the issuance of such ruling, it is necessary

to reconsider your status at this time. Accordingly, it is requested that you submit the following information:

1. A brief statement of the type of material and literature published and or sold by you.

2. A statement as to whether you are affiliated with any particular church group or denomination and, if so, the manner of such affiliation and the extent of the control of such group or denomination over your activities.

3. The names of your present officers and directors, and by whom these individuals were elected or selected.

4. Classified financial statements showing your receipts and disbursements for the years 1951 and 1952 and your assets and liabilities as of the close of each year.

5. The amounts distributed, if any, of your profits for religious purposes or to religious groups, and the names thereof during your last two years of operation.

The information requested herein should be furnished within thirty days for the attention of T:S:E05 -MEM.

18. Having been allowed additional time to submit the required information, plaintiff by letter dated November 5, 1953, advised the Commissioner of Internal Revenue in part as follows:

1. *Type of material and literature published by Scripture Press Foundation,—also nature of its activities:*

We prepare, publish and distribute quarterly, monthly and weekly, manuals, books, pamphlets, papers, magazines and supplies of all kinds for the use in Sunday Schools and Churches of all denominations for the purpose of aiding instruction in the Word of God.

In addition to this we organize, supervise, aid in, and conduct institutes and conventions for training teachers in Christian Sunday Schools, Daily Vacation Bible Schools and other Church Schools.

2. *Church affiliation:*

The Foundation is not affiliated with any particular church group or denomination. The Foundation is truly inter-denominational in that it serves presently churches in approximately fifty-two (52) different denominations.

5. *Distribution of profits:*

We do not make any distributions of profits as such. We endeavor to maintain a sound financial condition. We find ourselves compelled to shortly give up inadequate rented quarters in Chicago; and we are seeking to procure finances for a suitable headquarters building outside the City. We have started a reserve toward its cost.

We treat as a part of our current expense the amounts which we expend directly for religious purposes without requiring or seeking any direct return. These are shown on Schedule 5. In addition, we serve churches generally on as near a sound cost basis as we think we conservatively can.

Plaintiff also submitted the required financial statements of its operations for the fiscal years ended January 31, 1952 and 1953, summaries of which are as follows:

	1952	*1953*
Net sales	$1,675,819.59	$1,964,520.60
Less		
Cost of sales	790,984.88	876,529.46
Merchandise handling expense	197,980.02	213,348.18
Distribution expense	281,256.14	305,689.74
Administration & general expenses	308,998.07	372,748.19
Other expense	15,798.05	27,562.05
Total deduction	1,595,017.16	1,795,877.62
Net income	80,802.43	168,642.98

In the fiscal year ended May 31, 1946, plaintiff had reported expenditures of $4,258.99 for contributions to religious organizations and conventions and other such functions. For the fiscal year 1952, similar expenditures were reported at $36,764.69, and for 1953 at $48,317.26, somewhat less than 2.5 percent of net sales.

19. Plaintiff's balance sheets at the close of its fiscal years ended January 31, 1952 and 1953, as reported to the Commissioner of Internal Revenue, are summarized as follows:

Assets	*1952*	*1953*
Cash	$ 48,685.82	$ 49,787.35
Government securities	40,125.92	140,621.10
Accounts receivable	146,865.98	173,732.06
Inventories	286,207.75	288,901.69
Furniture, fixtures & leasehold	89,324.33	105,606.64
Deferred charges	56,560.80	70,166.89
Other assets	658.13	658.13
Total assets	668,428.73	829,473.86
Liabilities		
Accounts payable	97,272.02	91,347.42
Accrued payroll, deferred income & other liabilities	21,776.38	20,103.13
Capital	400,000.00	400,000.00
Unallocated earnings	149,380.33	318,023.31
Total liabilities & capital	668,428.73	829,473.86

Plaintiff advised that it had started a reserve toward the acquisition of a suitable building for its headquarters outside of the city of Chicago, and had increased its capital account to $400,000 as explained hereinafter in finding 51. During the 1952 fiscal year, plaintiff invested $40,000 in Government securities, and in the 1953 fiscal year an additional $100,000.

20. By letter dated December 31, 1953, received by plaintiff on January 4, 1954, the Chief, Exempt Organizations Branch, Office of the Commissioner of Internal Revenue, issued a ruling that plaintiff, beginning with the fiscal year ended January 31, 1953, and for subsequent years, was not exempt from tax. Pertinent parts of this ruling are as follows:

> A review of the information before us shows that your primary activity in furtherance of your principal purpose is the publication and sale of religious publications, periodicals and supplies. Although such materials may be necessary in the carrying out of the various religious functions of the groups purchasing them, the manufacture and supply thereof does not constitute a religious activity in itself but is a business of a kind ordinarily carried on for profit.
>
> Section 101 of the Code provides that an organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of such section on the ground that all of its profits are payable to one or more organizations exempt from tax.
>
> Accordingly, since your primary activity is to carry on a business of a kind ordinarily conducted for profit, notwithstanding that it is your intention to operate at or near cost, it is necessary to hold that you are not entitled to exemption from Federal income tax under section 101(6) of the Code. Accordingly, our ruling of September 11, 1946, is modified to hold that beginning with the fiscal year ended January 31, 1953 and for subsequent years you are not exempt from tax. You are required, therefore, beginning with the fiscal year ended January 31, 1953 and for subsequent years, to file income tax returns on Form 1120.

Plaintiff was allowed 30 days to file a protest against the ruling.

21. Under date of April 28, 1954, having been granted extensions of time, plaintiff filed a written protest to the adverse ruling of the Commissioner of Internal Revenue.

By letter to plaintiff, dated December 31, 1954, the Commissioner of Internal Revenue advised of the consideration of the protest and affirmation of the ruling, as follows:

> Our ruling was premised on the ground that your primary activity, which is the publication and sale of religious publications, periodicals and supplies, constitutes a business of a kind ordinarily carried on for profit, thereby precluding your exemption from tax.
>
> You have submitted that your entire function lies in the field of religious education through the provision to Sunday Schools and Churches of various denominations of religious materials and tools at the lowest possible cost. You point out that the majority of the items distributed and sold by you are prepared and developed by your staff, which spends much time in researching in new and more efficient religious techniques. Though you have accumulated a surplus, such surplus is retained for the purpose of continuing to furnish such materials and to carry on your religious activities for which you have no receipts. A part of your surplus is also being accumulated in a building fund.
>
> With respect to religious activities which you state are conducted by you without remuneration therefor, you indicate that such activities include religious counselling and advice given to Church Associations, Pastors and Sunday Schools concerning religious instruction, Bible Class and Sunday School work, advice and counselling to Church Conventions and Convocations and preparation sessions for Vacation Bible Schools, the furnishing of speakers and chorale groups for various religious functions and future plans for translation of your publications into foreign languages for use of missionaries and the creation of religious scholarships.
>
> You submit that your own publications which consist of various series of Sunday School lessons, Bible Series lessons, and other similar materials, for Sunday School and Bible vacation schools are unique in that they are entirely originated and created by your staff. You state that they are truly great religious works and constitute

a religious activity. Concerning the other materials and supplies that are distributed but not prepared by you, you consider that they are part of the tools of your religious activity and are related thereto. You therefore contend that you are not a publishing business in the sense of a business carried on for profit in that you do not operate a printing business, you do not deal with the public, and your own activities include the creation and origination of your religious educational material and curricula, the conduct of religious research, and religious counseling and advice to Pastors, Sunday School Superintendents and Sunday School teachers.

We have carefully considered the arguments advanced in support of your contention that you are a religious organization within the meaning of section 101(6) of the Code of 1939, now described in section 501(c)(3) of the Code of 1954, and are entitled to exemption thereunder. We are of the opinion, however, that the conclusion reached in our prior ruling is correct. Notwithstanding that the majority of the materials sold by you are prepared by members of your own staff as a result of their own research and creative endeavor, the preparation and sale thereof is not a religious activity within itself but is secular in nature. The fact that such materials and equipment may be necessary to and are used by the religious bodies purchasing them in their various fields of religious activity does not cause their publication and sale to become a religious operation any more than any other commercial service afforded a church or church group.

Though you indicate that your organization does not have all the characteristics of the ordinary commercial publishing firm, in that you carry on activities other than publishing and selling which may be considered religious, it is shown that your primary activity consists of your publishing operations. Since your primary activity consists of conducting a commercial enterprise, as stated in our prior ruling, you cannot qualify for exemption. The fact that your profits are retained for the purpose of continuing your activities or building a new building and upon dissolution your assets would be distributed for exempt purposes does

not obviate the conclusion that you are engaged primarily in business activities.

Accordingly, our ruling of December 31, 1953, that you are not exempt from Federal income tax and are required to file income tax returns on Form 1120, beginning with the fiscal year ended January 31, 1953, is hereby affirmed.

22. On or about March 18, 1955, plaintiff filed with the District Director of Internal Revenue, Chicago, Illinois, Federal income tax returns for the fiscal years ended January 31, 1953, and 1954. These tax returns reflected net income of $164,801.95 for the 1953 fiscal year and $243,831.70 for the 1954 fiscal year. Plaintiff, however, claimed for deduction from such income the sums of $145,974.95 for the 1953 fiscal year and $225,287.70 for the 1954 fiscal year under Section 101 of the Internal Revenue Code, and reported net taxable income of $18,827 for 1953 and $18,544 for 1954. The net taxable income so reported represented profits from the sale of Christian literature and related merchandise in plaintiff's store operations, which plaintiff classified as unrelated business income as defined in Sections 302, 421 and 422 of the Revenue Act of 1950, more particularly defined as Supplemental U net income. On the net taxable income so reported, plaintiff paid income tax of $5,648.10 for 1953, and $5,563.20 for 1954 when the returns were submitted.

On March 23, 1955, plaintiff submitted claims to the Commissioner of Internal Revenue for refund of these taxes so paid. No action having been taken upon the claims, plaintiff filed its original petition in this Court on March 6, 1956, to recover such tax payments with interest.

Thereafter, deficiency assessments were made for the fiscal years 1953 and 1954, as related in finding 2. The Internal Revenue Service not only restored to net income the sums excluded by plaintiff as non-taxable income, but made additional adjustments, and increased net income for

the 1953 fiscal year to $226,512.11, and for the 1954 fiscal year to $260,751.35, upon which taxes were computed of $153,058.48 for 1953, and $173,039.63 for 1954.

Having paid the additional assessment of $147,410.38 for the fiscal year ended January 31, 1953, plaintiff on May 8, 1957, filed a timely claim for refund, supplemental to the previous claim filed for the same year, but covering all Federal income taxes paid by plaintiff for that year in the sum of $153,058.48. This claim was denied by the Internal Revenue Service on May 22, 1957, and plaintiff's first amendment to petition was filed on July 10, 1957, to include the payment of the deficiency assessment of $147,410.38 for the fiscal year ended January 31, 1953.

23. Plaintiff's predecessor, Scripture Press, Inc., was an Illinois corporation organized on October 10, 1932, as a profit organization, with an authorized capital of $3,000 consisting of 300 shares of common stock at $10 per share. Paid in capital of $1,500 was provided by the incorporators and stock was issued to them in the amounts of 99 shares to Victor E. Cory, 50 shares to Lloyd B. Tucker, and 1 share to Harry G. Saulnier. Thereafter additional capital of $1,000 was paid in, and the total amount for which capital stock was issued was $2,500.

The primary objective of Scripture Press, Inc., was the publication and dissemination of the All Bible Graded Series of Sunday School lessons conceived and composed by Dr. Clarence H. Benson, for the improvement and furtherance of Christian education in the Protestant Sunday Schools, as more hereinafter related. The lesson material was prepared in series according to age groupings of children from 4 to 18 years in attendance at Sunday Schools. Although published and distributed quarterly, lesson material was prepared and dated for each Sunday of the quarter. It was revised and improved from year to year.

24. The officers of Scripture Press, Inc., were Victor E. Cory, president, Lloyd B. Tucker, treasurer, and Harry G.

Saulnier, secretary. Mr. Cory's wife, Bernice T. Cory, became vice president about 1944. Mr. Tucker was Mrs. Cory's father, and Mr. Saulnier was married to Mrs. Cory's sister.

The board of directors of Scripture Press, Inc., consisted of Mr. and Mrs. Cory, Mr. Saulnier, and William R. Thomas. Mr. Thomas is the same person previously mentioned in finding 7.

Following the organization of Scripture Press, Inc., Mr. Cory arranged for the purchase and installation of printing press machinery and equipment at 829 Orleans Street, Chicago, Illinois, the first place of business of the company. The entire corporate capital of $2,500 was applied as a down payment on this machinery and equipment. After unsuccessful operations by the company for about a year, this equipment was repossessed and removed by the vendor, and the company lease of the premises was terminated. Thereafter, neither this company nor the plaintiff ever performed any printing, but all such work was contracted to independent printing establishments.

The Corys had been and have remained firm in their religious belief and conviction that they had a Christian mission to provide and disseminate improved Sunday School teaching and lesson materials, and by this and related means to advance and improve Christian education. Despite initial failure, Mr. Cory continued to operate from his home, and prepared samples of lesson materials and contacted Sunday School leaders and representatives at meetings and conventions, and eventually obtained subscriptions sufficient to justify publication of the first quarterly series of teaching manuals and lesson materials. This series was for the last three months of 1934, and consisted of 34,000 lessons. For the same quarters of 1935 and 1936, the issues were respectively 84,000 and 112,000. Thereafter, the publication and distribution of teaching manuals and

lesson materials progressively increased and by 1938 had become a profitable operation.

25. During the first several years of operations substantially all work was performed by Mr. and Mrs. Cory. At the commencement of Scripture Press, Inc., they had a family of four sons, the youngest of whom was 3 years of age. From 1932 to 1936, Mr. Cory had no regular salary from the business, and his savings, and an inheritance from his father were consumed in this period of operation. He was able to provide his family only with the bare necessities of life. The company's assets and operating deficits prohibited an adequate credit rating.

During these years financial assistance was rendered to the operations by Mr. W. R. Thomas who was otherwise never active in its affairs. An insurance policy on the life of Mr. Cory was purchased and maintained for the benefit of the company for the protection of creditors. Following the organization of plaintiff, it was determined that plaintiff's resources were adequate and that this life insurance policy was no longer necessary. With approval by its board of directors, plaintiff sold the policy to Mr. Cory for its cash surrender value of $1,600.

At the time of plaintiff's organization, Mr. and Mrs. Cory owned all of the outstanding stock of Scripture Press, Inc., except the one qualifying share held by Mr. Saulnier. No dividends were ever declared or paid to the stockholders of Scripture Press, Inc. No fees or other compensation were paid to any member of the board of directors for services thereon.

26. In 1934 Scripture Press, Inc., rented office space in a rooming house at 741 North LaSalle Street, Chicago, Illinois. It consisted of one small room, where all operations were carried on for about eight months, when an additional room was obtained. By 1937 the organization consisted of six employees, and the gross volume of business

had reached about $100,000 per year. The company's operations were then moved to 800 North Clark Street. Expansion continued thereafter until an entire floor was occupied at this address.

By 1947, after plaintiff had taken over all assets and liabilities and activities of Scripture Press, Inc., the organization occupied the fifth and sixth floors of 800 North Clark Street, or about 17,000 square feet, and about 5,000 square feet of basement area in the same building. Plaintiff then moved to 434 South Wabash Street, Chicago, Illinois, where about 27,000 square feet of space was occupied. In November 1956 plaintiff moved its operations to its new building in Wheaton, Illinois, about 26 miles west of Chicago.

27. Table I herein reflects the progress of operations of Scripture Press, Inc., as shown by its net sales, income or loss, income taxes paid, surplus or deficit, and cash balance for each of the calendar years and parts thereof from July 1, 1934, to May 31, 1945, on which latter date the company was dissolved and all of its assets and liabilities were distributed to plaintiff.

TABLE I

SCRIPTURE PRESS, INC.

Sales, earnings, taxes paid, year and surplus and cash balances July 1, 1934 to May 31, 1945

Period ending Dec. 31	*Net sales*	*Income reported on tax returns*	*Income taxes paid*	*Year end surplus or (deficit)*	*Year end cash balances*	*Adjustments by Internal Revenue Service*		
						Additional income	*Additional taxes*	*Interest and penalty*
6-30-34 balances				(−2,467.85)	$92.80			
1934	$9,953.31	(−1,023.01)		(−3,725.83)	166.25			
1935	38,226.81	248.06	34.11	(−3,450,57)	111.05			
1936	55,460.47	149.78	21.62	(−3,412.27)	321.57			
1937	72,186.80	(−459.26)		(−3,915.15)	119.55			
1938	95,325.47	4,513.52	564.19	573.77	961.48			
1939	111,577.22	265.43	33.18	190.44	597.00			
1940	147,399.12	1,878.84	279.00	2,014.50	1,342.19	706.75	208.51	100.63
1941	197,066,46	4,306.59	904.39	6,009.79	756.21	736.30	157.11	66.40
1942	242,131.72	3,563.70	890.93	8,669.10	986.56	4,442.83	1,229.29	445.78
1943	327,241.63	17,415.73	2,202.15	25,193.90	931.81	1,620.07	4,795.70	1,279.58
1944	469,479.46	17,214.63	3,552.15	25,021.73	2,035.90	5,001.69	6,550.55	1,589.36
1945 to 5-31-45	190,999.96	(−6,534.86)		26,710.11	684.23	7,385.67	212.70	46.29
Totals	1,957,048.43	41,539.15	8,481.72			19,893.31	*13,153.86	*3,528.04
Paid in capital				2,500.00				
Paid in surplus				1,500.00				
Net worth transferred to Foundation May 31, 1945				30,710.11				

* A post-war excess profits credit of $908.15 was allowed against tax assessments for 1943, and the plaintiff paid the additional sums of $15,773.75 on June 29 and July 1, 1949.

28. In addition to Sunday School teaching manuals and lesson materials, Scripture Press, Inc., published a magazine, first known as the Church School Promoter, later the Sunday School Builder, and finally, Sunday Magazine. This publication was among the assets acquired by plaintiff.

At a special meeting of plaintiff's members on October 31, 1945, it was reported that a considerable time before plaintiff was organized, an understanding had been reached between Scripture Press, Inc., and Messrs. Walker and Cory that the magazine Sunday would be made a separate enterprise in which Mr. Walker would have one-half interest. It was considered that the magazine had no essential connection with plaintiff's operations and was an enterprise apart from plaintiff. It was agreed that the operation of the magazine be turned over to a corporation to be organized by Messrs. Walker and Cory.

29. Victor E. Cory and Robert A. Walker organized an Illinois corporation called the Sunday Magazine, Inc., with 100 shares of capital stock at $10 per share. Mr. Cory subscribed to 49 shares, and Mr. Walker to the other 51 shares. All personnel, furniture and equipment in this magazine department of plaintiff, together with the subscription accounts and obligations on prepaid subscriptions, were transferred by plaintiff to this new corporation effective November 1, 1945.

There was no cash involved in the transfer of the magazine department. The new corporation, however, assumed plaintiff's obligations of $13,191.04 on prepaid unexpired subscriptions to the magazine, and received accounts receivable and furniture and fixtures of $4,058.83. Plaintiff thus realized a net reduction of its liabilities by $9,132.21.

30. Sunday Magazine, Inc., continued the publication of the magazine, the name of which later became Christian Life, under the management of Mr. Walker. It subleased office space from plaintiff at 434 South Wabash Avenue and

remained in Chicago after plaintiff moved its operations to Wheaton, Illinois. Mr. Walker headed plaintiff's dissemination division until plaintiff moved from Chicago. Thereafter he was fully engaged in the publication of Christian Life magazine.

Mr. Cory participated somewhat in the publication of Christian Life and received an annual salary of $2,400 from such operations until 1955. His duties consisted largely of conferences with the editorial and business staffs on finances, purchases and personnel. He no longer has any official connection with this magazine work.

31. Plaintiff's members had various substantial reasons for disposing of the magazine operations. The magazine department had operated at a deficit for several years. Its operations required monthly deadlines, whereas plaintiff's Sunday School publications were issued quarterly. The magazine carried paid advertisements, which practice was incompatible with plaintiff's operations.

After disposing of the magazine operations, however, plaintiff was interested in the continued publication of the magazine because it was an excellent medium for advertisement of plaintiff's Sunday School materials. Plaintiff continued to advertise in Christian Life as well as several other religious publications. Plaintiff contributed to the maintenance of the Sunday School section of the magazine because it was a leading evangelical publication which afforded plaintiff the means to advance its purpose of promoting and developing the Sunday Schools.

32. Victor E. Cory and his wife, Bernice T. Cory, were the persons primarily responsible for the organization of the Scripture Press, Inc., and the eventually successful pursuit of its purposes and objectives. Neither of them was a theologian or ordained minister. However, both were devout Christians of the Evangelical Protestant Faith, and both of them developed a missionary zeal to promote and

develop the effective teaching of the Bible in the Sunday Schools.

Mr. Cory graduated in 1915 from Heidelberg College at Tiffin, Ohio, with a degree in liberal arts. During his undergraduate years, he served on the staff of the college newspaper, being its business manager in his senior year. Upon his graduation, he was awarded a fellowship in engineering at Case School of Applied Science at Cleveland, where he was graduated as an electrical engineer in 1919. He later completed post-graduate courses in engineering at the University of Michigan.

Throughout his youth and during his college training, Mr. Cory was active in the Sunday School, Epworth League, and other organizations for young people in the Methodist Church. After completion of his college career, he pursued religious studies at the Moody Bible Institute, Chicago, Illinois, one or two evenings per week for a period of eight to ten years.

Mr. Cory was successfully employed as an electrical engineer with the Commonwealth Edison Company of Chicago from 1919 to 1925. During this period he first attended the North Side Congregational Church of Chicago, where he taught Sunday School and was active in youth organizations of this church. Later he attended the North Side Gospel Center where he became superintendent of the Sunday School. He met his wife at the Congregational Church, and they were married in June 1922. For several years, Mr. and Mrs. Cory together conducted religious mass meetings on downtown streets in Chicago, visited and prayed with hospital patients, and conducted Gospel campaigns from door to door, averaging about four evenings per week in such religious work.

As a result of his own experiences and contacts with other religious leaders, Mr. Cory came to the realization in time that there was a great need for improvement in the teaching

techniques and materials for Bible instruction in the Sunday Schools.

33. In 1925, at the suggestion of Evangelist Paul Rader, Mr. Cory left his engineering position and became manager of the Tabernacle Publishing Company, publishers of religious song books. By merger this company later became Hope Publishing Company. Mr. Cory remained in this work for about three years. He realized no monetary gain in leaving the engineering profession, but both he and Mrs. Cory felt strongly that he should take the opportunity to work directly in Christian service.

In 1928, shortly after the merger, Mr. Cory left Hope Publishing Company and became assistant manager of the Bible Institute Colportage Association, which later became known as the Moody Press, an integral part of the Moody Bible Institute. This organization published religious books, and Mr. Cory engaged in its editorial and sales work for about four years. His employment was terminated in 1932 by reason of the discontinuance of book publishing and curtailment of other activities.

34. During his work with the Moody Press, Mr. Cory became closely acquainted with Dr. Clarence H. Benson, who had become chairman of the Christian Education Department of the Moody Bible Institute after many years of service. Dr. Benson was a recognized leader in Christian education and author of a number of books in that field.

Over a period of several years Dr. Benson had written and developed the graduated curriculum of Bible studies for children, previously mentioned in finding 23. Dr. Benson submitted these teaching and lesson materials to Moody Bible Institute for publication, but they were rejected. Shortly thereafter Mr. Cory entered into an agreement to publish this course, and Scripture Press, Inc., was organized in 1932 to accomplish this purpose.

Dr. Benson was for several years engaged with Scripture Press, Inc., in charge of the editorial work on these lesson

materials. He was never an officer or salaried employee, but was compensated by way of royalties on the sales and distribution of his compositions. Although no longer obligated to do so, plaintiff continued royalty payments to Dr. Benson for some period of time. His only connection with plaintiff was services as a lecturer at Sunday School meetings and conventions, sponsored by plaintiff.

35. Mrs. Bernice T. Cory was graduated with a Ph. B. degree from the University of Chicago, and thereafter taught English in the Oakland, Illinois, high school for one year before her marriage. She attended evening classes at the Moody Bible Institute, attended Sunday Schools all of her life, and otherwise engaged extensively in religious activities.

Mrs. Cory participated in the editorial work early in the activities of Scripture Press, Inc., and increased such participation until eventually she became the chief editor of plaintiff's materials. She conducted research in educational curricula, and studied the latest methods and techniques of teaching employed in public schools. She was primarily responsible for plaintiff's program of revision of its Sunday School materials from time to time to include applicable current events and incorporate new and improved methods, including use of visual aids such as suede graphs and gospel graphs. Mrs. Cory was designated assistant treasurer of plaintiff's predecessor until 1944 when she became vice president.

36. The annual salaries of the officers of Scripture Press, Inc., commencing with the year 1936 and to and including May 31, 1945, the date of dissolution of the corporation, including the salary of Mrs. Cory as office editor, were as follows:

Years	*Victor E. Cory, President*	*Bernice T. Cory, Office Editor*	*L .B. Tucker, Treasurer*
1936	$4,939.27		$1,820.00
1937	3,523.13	$1,335.95	1,808.35
1938	7,200.00	250.00	2,000.18
1939	7,225.00		2,125.25
1940	9,625.00		2,314.25
1941	7,225.00	2,400.00	2,629.25
1942	6,432.59	2,400.00	2,604.00
1943	7,200.00	2,400.00	2,604.00
1944	7,245.75	2,415.25	3,044.50
1945 to 5/31	3,156.66	3,185.32	1,315.56

No dividends were ever declared or paid to the stockholders of Scripture Press, Inc. By transferring their stock to plaintiff in May 1945, Mr. and Mrs. Cory relinquished their claims to the prior earnings as well as the $4,000 paid in as capital. Mr. Saulnier and Mr. Thomas, directors of Scripture Press, Inc., never received any salaries or other compensation.

37. The primary objectives and activities of plaintiff were first conceived and practiced through operation of Scripture Press, Inc. In addition to publication of the Sunday School lesson materials, Scripture Press, Inc., provided some instructional sessions for Sunday School teachers and representatives at religious conventions, workshops and seminars. This work was performed at that time almost exclusively by Mr. and Mrs. Cory. Scripture Press, Inc., made some cash and merchandise grants to various religious organizations and institutions. These grants were small because of the need for working capital in the operations. During the ten years ended May 31, 1945, cash donations amounted to $2,160.29. At no time during this period was the cash balance adequate for large donations.

Scripture Press, Inc., operated a bookstore in Chicago, which was continued by plaintiff. This bookstore was operated primarily for the convenience of local ministers

and Sunday school representatives in obtaining plaintiff's publications and allied religious materials.

38. All members, officers, directors and most of the employees of plaintiff and its predecessor corporation were and are adherents of the evangelical theology of the Protestant faith. Evangelicals believe in the conservative or literal acceptance of the Bible as the word of God, as distinguished from the belief in a more liberal interpretation. Evangelicals do not constitute any particular church or any particular denomination, but are found within many of the protestant organizations. Plaintiff is not an institution of any church and has no affiliation, direct or indirect, with any religious denomination or church.

The National Association of Evangelicals is the national organization of believers of the evangelical theology. Affiliated with that association is the National Sunday School Association. Plaintiff is not an affiliate of either of these organizations, but did take part in 1946 in the organization of the National Sunday School Association, donating the first office furniture and providing its first secretary. Mr. Cory has served on its executive committee and served as its official secretary and treasurer.

Plaintiff's members or trustees, which constitute its board of directors, are a self-perpetuating body, empowered to select new or successor members. The membership was so constituted in order that the religious principles and objectives of plaintiff's founders would be continued throughout plaintiff's existence.

39. All employees of plaintiff and its predecessor corporation were and are required to be devout Christians and also otherwise qualified for the work to be performed. They must have church affiliations, but not restricted to any particular denomination. Plaintiff's employees actually represent fifteen to twenty different denominations. Before commencing each working day, all employees of plaintiff

and its predecessor were expected to and did join in morning prayer and worship. By 1945 Scripture Press, Inc., had about 140 people in its employ, and by 1957 plaintiff's employees had increased to approximately 240 individuals. Many of plaintiff's employees are either graduates of religious seminaries or institutes or students continuing their religious studies.

40. The transfer of the business of Scripture Press, Inc., to plaintiff involved no change in location, personnel, policies, finance or activities, except that thereafter rapid growth occurred. The Corys and their associates continued to advance their fundamental purpose of improving Sunday Schools by providing better teaching and lesson materials. Other means of promoting and improving Sunday Schools were expanded by plaintiff as growth and development occurred in its operations.

In the fall of 1944, Mr. Cory discussed company tax problems with Mr. Glenn Ingram, a certified public accountant, who had previously handled audits for Scripture Press, Inc. Mr. Ingram had known Mr. and Mrs. Cory since 1921 when he had participated with them in church activities, and was well acquainted with their objectives. He was advised of the plans to expand the program of free instruction and training for Sunday School teachers, to be financed in part by public solicitation of funds. Mr. Ingram advised Mr. Cory that all contributions to Scripture Press, Inc., would be subject to tax as income of the company, and that the company's costs expended in providing instructors and donating materials at meetings of Sunday School teachers and representatives might be construed as charitable contributions, along with other donations and cash gifts, in which event the company's income tax situation would become complicated by the existing limitation of such contributions for tax purposes to five percent of net income. Mr. Ingram recommended that consideration be given to the organization of a tax exempt foundation for the advancement of

religious education. Thereafter, plaintiff was organized as hereinbefore stated in these findings.

Plaintiff made only one public drive for funds, which occurred in December 1946. Solicitations were made by mail, and plaintiff realized approximately $1,000 in donations.

41. Plaintiff functions through an executive committee, consisting of plaintiff's president, secretary, and the heads of each of its operating divisions. All policies, functions and matters of administration are determined by unanimous consent of this committee, with approval of the board of directors. Any proposed action lacking approval of all members is deferred until unanimous agreement is reached.

Division heads are selected by unanimous approval of the executive committee. Necessary qualifications of any prospective appointee are that he must have the same doctrinal beliefs of plaintiff's officers and members, sufficient educational background and experience to fill the position, and active affiliation with a church and Sunday School. Being informed of plaintiff's principles and practices, any appointee is expected to conform thereto, including participation in the daily worship and prayer meetings. Such person is expected to practice total abstinence from the theater and from the use of tobacco and alcoholic liquors. Each meeting of the executive committee, as well as any meeting of the members or board of directors, is opened with prayer.

42. The salaries of plaintiff's officers and executive heads are determined and fixed by the board of directors, by unanimous consent, and upon consultation with plaintiff's auditor, Glenn Ingram, as to what would be fair and reasonable compensation. It has been the established policy never to pay a newly employed official greater compensation than that of his prior employment or ministry.

The salaries of plaintiff's principal officers for the years 1946 through 1955 were as follows:

Year	*V. E. Cory, President*	*B. T. Cory, V. P. & Treasurer*	*R. A. Walker, Vice President*	*R. A. Ginter, Controller*
1946	$10,049.62	$6,032.76	$4,317.10	
1947	12,232.50	8,084.00	7,287.00	$6,544.00
1948	15,059.70	10,022.40	9,030.60	9,030.60
1949	16,473.30	11,071.20	10,079.40	10,079.40
1950	17,920.20	12,106.40	11,145.20	11,145.20
1951	18,925.80	13,122.00	12,150.80	12,150.80
1952	20,172.20	13,800.00	13,397.20	13,397.20
1953	21,370.00	14,620.00	14,620.00	14,620.00
1954	22,653.00	15,878.00	16,094.00	*13,210.00
1955	24,600.00	17,600.00		

*** Mr. R. A. Ginter died in late 1954.**

Dr. Cook, who replaced Mr. Walker about February 1, 1957, was retained at a salary of $15,000 per year. The above-stated salaries of Mrs. Cory include some payments of royalties for use of her visual aid creations as supplementary lesson material. She is the only salaried employee who received any royalty payments. In addition, the Corys received compensation over a period of time of $25 per month for use by plaintiff of a room in their home as an office, library, and conference room.

The compensation to plaintiff's officers was fair and reasonable and commensurate with the duties performed by them.

43. Plaintiff has five operating divisions: (1) Editorial Division, headed by Bernice T. Cory; (2) Dissemination, headed by Dr. Robert A. Cook; (3) Production, headed by William O. Hall; (4) Finance, headed by Wendel Anderson, and (5) Personnel, headed by Wilfred Frykman.

The editorial division creates most of plaintiff's publications, and edits all material published by it. Some material is written on outside assignments. The dissemination division promotes the sale of materials through mailing lists, distribution of catalogs, advertising in religious magazines,

and the operation of two bookstores, one in downtown Chicago, and the other in plaintiff's Wheaton building. The production division handles arrangements for the printing of plaintiff's materials by outside printing companies, purchasing of materials and supplies, and the receiving and shipping of orders. The finance division handles all finance and accounting, and credits and collections. The personnel division handles the screening and hiring of employees and all other personnel matters, including the prayer and worship sessions at the commencement of each day's work.

44. Within its dissemination division, plaintiff has an instructional department, sometimes referred to as the convention department, headed by Reverend Sherman Williams. This department was first organized as such shortly after plaintiff took over the operations of the predecessor corporation, the department staff consisting then of only one person and a secretary who were assisted by officials and employees of other departments. Plaintiff conducted a series of instructional sessions in Chicago, consisting of about five sessions per year, at which 200 to 600 Sunday School representatives were in attendance. When Reverend Williams became director of this department in July 1955 the staff consisted of three faculty members and a secretary.

By October 1957, the faculty of this department consisted of three ordained ministers, two women with masters degrees in religious education, an office secretary, and a part-time representative on the Pacific Coast. It continued to use personnel of other divisions in the instructional work. In 1957, some fifteen employees in the editorial division, qualified to conduct instructional courses, were participating under the direction of the instructional department in those activities. In addition, plaintiff has made the arrangements and paid the expenses of various ministers and religious educators to participate in such meetings and conventions.

In 1957 plaintiff arranged and conducted seminars for pastors and workshops for Sunday School teachers in its own building. During the same year plaintiff's representatives and sponsored speakers and instructors participated in some 244 conventions, seminars, institutes, and workshops relating to religious education.

The fundamental purposes of these activities are to stimulate the interest of Christian leaders and teachers in improved techniques and methods of Sunday School teaching, to train and instruct Sunday School teachers in such techniques and methods, and thereby to promote and improve the Sunday Schools and accomplish an effective teaching of the Bible to children.

Besides providing instructors and speakers for religious meetings, seminars, institutes, and conventions, both regional and national, plaintiff, through its instructional department has assisted particular churches in development programs for Sunday Schools, and provided speakers in Christian education classes in schools and colleges of religion, and counselled Sunday School representatives by mail and telephone, providing booklets on Christian education, and more recently has created and made available a series of motion pictures and film strips concerning Sunday School teaching.

All materials employed by plaintiff in connection with these instructional courses and sessions are provided without charge. Plaintiff does not conduct a sales program in connection with such meetings, although at some conventions plaintiff has an exhibit of its materials as do other organizations.

45. The National Sunday School Association held twin conventions in 1957 at Los Angeles, California, and Grand Rapids, Michigan, at which about 9,000 ministers, teachers and church leaders were in attendance. Plaintiff provided about one-fourth of the speakers and instructors, including

members of its own faculty, and paid all of their travel and other expenses in connection therewith. Both Mr. and Mrs. Cory attended the Los Angeles convention. Thereafter, Mrs. Cory by invitation conducted a series of instructional courses on Sunday School teaching in individual churches at several locations in California.

Mr. Cory at plaintiff's expense has attended three of the latest world congresses of Youth For Christ International, one in Brazil, one in Venezuela, and the latest in August 1957 in Copenhagen, Denmark. Plaintiff also paid the expenses of the Palermo brothers, two noted evangelists, to conduct religious meetings at Sao Paulo, Brazil.

While in Europe, Mr. Cory visited England and various continental countries in the interest of Sunday School work. Plaintiff now employs a resident European representative to promote development of the Sunday Schools there, at a cost of about $3,000 per year.

46. Plaintiff's editorial division consists of four separate departments with a combined staff of eighteen writers, and in addition, plaintiff from time to time employs free lance writers. Extensive research is continuously conducted by the editorial division to improve plaintiff's publications.

Plaintiff's principal publications are the graduated Sunday School teaching and lesson materials known as the All Bible Graded Sunday School Lessons and the Sunday School summer school course known as All Bible Vacation School Lessons. In addition plaintiff publishes a large number of religious pamphlets, booklets and other supplemental teaching and lesson materials, and designs and provides various types of visual aids for teaching purposes.

Except for Mrs. Cory, the only royalty payments made by plaintiff have been to outside writers. Mrs. Cory received royalties of $1,393.65 during 1953; $1,895.70 in 1954; and $1,457.55 in 1955 on the sales of visual aids created by her.

47. Plaintiff's dissemination division handles the sale and distribution of plaintiff's publications, as well as other printed materials and merchandise obtained by plaintiff through direct purchases for resale. Plaintiff's 1957 catalog lists for sale its ten different groups of religious teaching materials, covering the age groupings from infancy into adulthood, and also its numerous other publications such as pamphlets and booklets. In addition, the catalog lists publications and merchandise purchased by plaintiff for resale, such as numerous religious books for all age levels, Bibles, Bible cases, religious song books, greeting cards, stationery, gifts, toys, games, handcraft supplies, records, films and filmstrips, projectors, a tape recorder, a record player, flags, chairs and tables. Plaintiff purposely handled a line of merchandise sufficiently complete so that Sunday Schools could obtain most of their requirements at one place. Most of the merchandise carried a religious theme, marking or Scriptural reference.

Sales are promoted by plaintiff, mainly through use of mailing lists of Church Sunday Schools throughout the country and through issuance of catalogs. Plaintiff advertises its publications in some twelve religious magazines.

Sales are also conducted by plaintiff in its two stores, one in downtown Chicago and the other in its Wheaton building. Store sales for the fiscal years ended January 31, 1949 to 1956 amounted to about $749,525, representing about 5.13 percent of plaintiff's total net sales for these eight years. Some of plaintiff's sales are made to outside bookstores and to individuals, but such sales amount to less than one percent of the total sales. Approximately 94 percent of plaintiff's sales are made directly to Sunday Schools throughout the country.

About 26,000 Sunday Schools use plaintiff's lesson materials and other items, representing about 75 different Protestant denominations and more than 3,000,000 Sunday School pupils. Many thousands of pastors, ministers, Sun-

day School teachers and other religious leaders receive instructional training directly or indirectly from plaintiff's programs. Substantial grants of lesson materials are made by plaintiff to newly formed Sunday Schools and other organizations unable to pay for such materials.

48. A summary of plaintiff's operating statements for each of the fiscal years ended January 31, 1951 to 1957, is reported herein in Table II. Complete operating statements for the fiscal years 1946 to 1950 were not placed in evidence. However, data for those earlier years show the following information with respect to plaintiff's total net sales, contributions received, merchandise grants and cash donations, and net income, for each of the fiscal years ended as indicated:

Fiscal year ended	*Total Net Sales*	*Contributions Received*	*Merchandise Grants & Cash Donated*	*Net Income*
2-28-46	$411,755.43		$2,239.98	(22,751.73)
1-31-47	716,519.82	$736.13	4,413.73	80,350.50
1-31-48	972,618.58	1,436.09	17,302.86	94,369.83
1-31-49	1,119,340.02	1,568.22	26,751.12	9,897.51
1-31-50	1,230,374.48	1,666.48	11,282.81	150,787.78

After January 31, 1950, plaintiff's operations continued to expand as shown in Table II.

Approximately 85 percent of plaintiff's total net sales (during all seven of the fiscal years shown in Table II) represent plaintiff's own productions, consisting of Sunday School teaching and lesson materials and supplemental publications and materials. About 15 percent of the total of these net sales consist of Bibles, books, other publications, and numerous items of merchandise, which are purchased for resale by plaintiff from outside sources. Plaintiff's officers testified in this case that little or no profit is realized by plaintiff in handling such outside materials. By allocating plaintiff's overall operating and selling expenses to each of these groups of sales in accordance with the ratio

between the net sales of each group, it is shown that a net loss was sustained by plaintiff on those items acquired from outside sources. Throughout the seven-year period, however, plaintiff averaged net income or profit from all of its operations at a rate of about 8.7 percent of total net sales.

The items in this finding and in Table II, designated as contributions received, were not receipts from any solicitation of public funds, but were honorariums received from some of the various churches and other groups where plaintiff furnished speakers or instructors.

With respect to the item of merchandise grants and cash donations, referred to in this finding and in Table II, the evidence in this case shows that in each year the value of merchandise granted was substantially greater than the cash donated by plaintiff. For the tax year ended January 31, 1953, the total figure of $31,951.89 is comprised of cash donations by plaintiff of $9,499.90 and the balance in merchandise grants.

49. Plaintiff's audit reports summarized in Table II fail to reflect the total costs incurred by plaintiff for its instructional work at Sunday School meetings and conventions and other sessions. This was due to the fact that the audits were conducted in accordance with the account classification employed by plaintiff. Plaintiff's records reflect approximate expenditures by plaintiff in its educational programs during seven fiscal years as follows: 1951, $21,835.67; 1952, $29,434.83; 1953, $36,452.08; 1954, $41,454.42; 1955, $46,378.63; 1956, $48,041.44; and 1957, $72,886.27.

50. Plaintiff's annual audit reports combine its store operations with its other sales and activities.

During the fiscal years ended January 31, 1949 to 1956, during which period plaintiff operated only its downtown Chicago store, as it had not yet opened operations in its Wheaton building, plaintiff's total store sales amounted to

TABLE II

SCRIPTURE PRESS FOUNDATION

Comparative operating statements for fiscal years ended January 31, 1951 to 1957

	1951 1951	1952 1952	1953 1953	1954 1954	1955 1955	1956 1956	1957 1957
Net sale to churches and others:							
Materials created and produced	$1,170,444.52	$1,379,205.78	$1,652,459.70	$1,969,114.94	$2,100,479.43	$2,239,158.80	$2,529,953.12
Other products sold	201,269.60	296,676.99	312,060.90	388,149.14	319,128.70	401,298.16	465,805.02
Total	1,371,714.12	1,675,882.77	1,964,520.60	2,197,264.08	2,419,608.13	2,640,456.96	2,995,758.14
Cost of sales:							
Materials produced	476,722.27	584,712.40	704,774.98	790,228.03	879,095.17	918,340.58	1,063,678.33
Other materials	109,101.16	172,222.15	180,922.64	158,061.33	183,302.32	210,022.27	241,804.51
Gross profit on sales:							
Materials produced	693,722.25	794,193.38	947,684.72	1,118,886.91	1,221,384.26	1,320,818.22	1,466,275.09
Other materials	92,168.44	124,454.84	131,138.26	130,087.81	135,826.38	191,275.89	224,000.51
Other income:							
Interest, discounts and misc.	5,469.94	17,470.43	12,636.52	12,798.22	10,871.56	17,349.46	16,206.68
Contributions received	1,843.69	2,798.31	2,890.33	3,157.73	4,112.41	3,161.20	4,532.65
Total gross income	793,204.32	939,216.96	1,094,349.83	1,264,930.67	1,372,194.61	1,532,604.77	1,711,014.93
Operational expenses:							
Salaries	276,535.42	331,304.18	389,202.26	420,606.08	502,419.24	545,438.16	664,413.36
Sunday school conventions	3,478.24	5,273.40	10,099.13	8,785.24	8,994.13	10,261.17	6,931.32
Institutes and conferences for sunday school development	2,749.17	5,099.13		3,942.56			
Royalties	10,547.21	13,560.73	11,561.16	12,322.76	15,281.28	23,073.49	25,192.33
Rent	34,540.15	40,780.79	42,278.31	45,929.99	48,420.71	62,947.69	84,674.42
Supplies	22,259.57	34,226.70	36,075.52	33,187.50	34,713.91	41,608.17	55,743.64
Transportation and shipping	55,259.43	83,918.49	82,759.11	67,312.95	79,520.63	101,881.76	124,774.49
Depreciation and amortization of leasehold improvements	13,722.06	17,501.05	21,886.64	25,622.16	28,596.61	18,113.84	16,999.35
Other operational expenses	84,462.93	104,944.42	131,184.69	145,075.16	178,066.41	198,634.45	256,685.83
Selling expenses:							
Direct mail advertising	38,900.62	47,581.62	40,031.31	49,480.21	43,741.60	52,090.07	57,490.07
Publications space advertising	29,074.79	30,823.58	31,493.33	21,269.94	38,473.09	44,429.11	47,480.97
Other advertising media	9,435.10	22,448.02	16,538.34	14,809.12	17,687.43	21,134.31	18,304.43
Catalogs	24,625.93	35,334.75	53,577.27	46,246.55	34,704.67	40,480.90	38,199.62
Institutes and conferences for sunday school development	2,609.00	9,991.00	15,260.00	16,217.00	32,790.00	21,722.00	32,319.00
Samples given away	6,341.74	7,419.64	9,047.76	10,426.90	9,564.65	14,252.44	15,468.64
Merchandise grants and cash donations	26,648.13	23,197.15	31,951.89	35,937.99	30,458.84	35,454.23	40,381.86
Other non-operating expenses	2,935.96	17,662.61	11,620.92	37,532.68	51,501.61	20,619.31	84,030.72
Total deductions	644,125.45	831,067.26	934,567.67	995,003.89	1,154,934.84	1,252,111.10	1,569,090.05
Add: Inventory adjustment				3,227.05			
Net income (—loss)	149,078.87	108,149.70	159,782.16	273,151.83	217,259.77	280,463.67	141,924.88

$749,525, and its net income therefrom approximated $66,857.95. About 48 percent of these store sales were plaintiff's own publications, and the remaining 52 percent were catalog items purchased from others. The net income from such sales of plaintiff's own products amounted to $72,185.08, whereas a net loss was sustained on other materials of about $5,327.13.

51. Plaintiff's financial condition as of February 28, 1946, and at the end of each fiscal year ended January 31, 1947, to 1957, is set forth in Table III herein, which is a summary of financial statements for those years. The accumulated capital and surplus at the end of fiscal year 1957 amounted to $1,610,817.30, all of which represents plaintiff's earnings since June 1, 1945, except about $30,000 received from its predecessor. The accumulated capital and surplus at the end of fiscal year 1953 amounted to $744,798.26; and at the end of fiscal year 1954 to $982,580.70.

At a meeting of plaintiff's board of directors on May 29, 1950, it was resolved that $200,000 be transferred from the earned surplus account to the capital account, and the basis for this action was recorded in the minutes to be "that the increasing volume of sales had made it advisable that the Foundation have an established, secure and increased working capital in order to continue the efficient operation of its business."

Plaintiff's board of directors on April 17, 1951, transferred an additional $170,000 from surplus to the capital account, increasing capital to $400,000, and it was recorded in the minutes that "said capital and future earnings to be conserved for the purpose of erecting the Foundation's own building in order to better carry on its operations and planned objectives, including the conduct of a Sunday School Institute for free instruction to Pastors, Sunday School Superintendents and Teachers."

On June 15, 1953, the Corys purchased about 2.5 acres of land adjoining the town of Glen Ellyn, near Wheaton,

Illinois, at a cost of $6,500. The Corys purchased this land to prevent its sale to others and in order to have it available for plaintiff pending selection and purchase of a site for plaintiff's building. Plaintiff thereafter purchased adjacent land, and with the approval of the board of directors, the Corys about September 30, 1955, sold and transferred their Glen Ellyn parcel to plaintiff at a price which was $1,000 in excess of the price previously paid by the Corys for the land. The price was fixed on the recommendation of plaintiff's auditor that the Corys would thus be reimbursed carrying charges and other expenses incurred by them in connection with the land.

52. Plaintiff's new building at Wheaton, Illinois, was completed about November 1956, at a total cost in excess of $1,000,000. Plaintiff expended $488,000 for the land and a substantial part of the construction costs. The balance of the costs was financed by plaintiff's issuance of a mortgage of $600,000 on the land and improvements, payable over a period of 15 years at $40,000 per year, plus interest at 4.75 percent. Almost one-half of its income for the fiscal year ended January 31, 1957, was required to service this mortgage. As of January 31, 1957, the remainder of plaintiff's accumulated earnings, except its cash balance and investment in Government bonds, was represented by accounts receivable, inventories, and other assets necessary for successful operations. As of the same time, its cash holdings amounted to $62,099, and with its $80,000 investment in Government bonds, plaintiff was in a position to liquidate most of its current liabilities. After the financing of its new building, plaintiff had adequate, but not excessive working capital for the current volume of business being performed.

53. Plaintiff's new building is distinguishable from industrial or commercial construction in that it was planned and designed to provide for its educational objectives. In addition to facilities for the publication and dissemination of plaintiff's literature and other materials, the building

TABLE III

SCRIPTURE PRESS FOUNDATION

Comparative Financial Statements

	Feb. 28, 1946	Jan. 31, 1947	Jan. 31, 1948	Jan. 31, 1949	Jan. 31, 1950	Jan. 31, 1951	Jan. 31, 1952	Jan. 31, 1953	Jan. 31, 1954	Jan. 31, 1955	Jan. 31, 1956	Jan. 31, 1957
ASSETS												
Cash	$1,454.53	$2,370.01	$11,062.21	$17,555.67	$95,994.26	$146,827.21	$48,685.82	$19,787.35	$43,156.91	$123,346.66	$64,966.30	$62,098.96
Accounts receivable, net	22,343.94	44,599.12	73,943.56	82,730.40	86,898.38	114,245.65	163,745.21	199,388.32	205,774.06	232,970.29	254,722.18	288,058.15
Inventories: Scripture Press		(Combined for years 1946 through 1950)				74,732.76	158,019.92	171,209.97	231,935.49	269,256.18	280,131.03	104,682.00
Inventories: other materials	71,607.98	98,911.62	151,868.62	153,049.40	122,600.01	123,184.75	166,004.67	143,913.69	191,088.29	180,718.97	251,243.38	306,377.80
Prepaid expenses	56,162.42	15,896.16	11,472.02	16,160.26	24,522.80	50,342.67	65,589.25	76,781.77	55,326.34	57,312.37	49,435.23	17,133.71
Other assets	2,352.84	2,423.00	1,076.14	1,162.12	633.88							2,039.10
Investments, Government bonds							40,125.92	140,621.10	250,000.00	400,000.00	180,000.00	80,000.00
Furniture and fixtures, net of depreciation		(Combined with leasehold improvements 1946-1950)				48,259.82	54,395.04	72,069.33	79,601.71	79,046.08	84,877.51	119,606.81
Leasehold improvements, net of depreciation	30,584.25	27,813.58	69,930.76	69,106.96	69,098.68	42,947.61	34,929.29	33,729.43	19,887.88	5,312.91		11,586.70
Buildings, net of depreciation											101,715.61	1,019,730.41
Landand installations									20,980.99	29,439.19	37,017.14	67,803.10
Total assets	184,505.96	192,013.49	319,353.34	339,764.81	399,748.01	600,540.47	731,495.12	887,503.96	1,101,051.67	1,382,512.95	1,604,108.81	2,409,117.07
LIABILITIES												
Accounts and notes payable	142,381.30	72,192.16	80,630.22	104,851.13	42,493.28	80,720.76	104,743.90	94,003.92	51,949.47	90,771.31	52,644.70	109,913.30
Due churches, bookstores, etc.	16,363.61	18,152.48	12,303.67	17,841.11	16,407.51	20,464.34	19,958.74	28,598.65	41,609.14	36,078.91	39,449.36	35,021.88
Accrued expenses	8,823.76	11,608.21	17,523.70	16,796.50	10,293.90	18,110.73	19,365.05	18,544.46	24,912.36	53,119.26	39,864.03	53,203.08
Federal income and excess profits taxes payable				*13,153.86						13,911.30	3,258.30	161.51
Deferred income (advances, etc.)	8,978.91	1,751.76	17,217.04	1,677.72	3,321.05	4,933.50	2,411.33	1,016.35				
Long term notes and mortgage			9,000.00	9,000.00								600,000.00
Other liabilities								542.32				
Total liabilities	176,547.58	103,704.61	136,674.63	163,320.32	72,515.74	124,229.33	146,479.02	142,705.70	118,470.97	193,883.78	135,216.39	798,299.77
Capital fund	30,710.11	30,000.00	30,000.00	30,000.00	30,000.00	230,000.00	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00	400,000.00
Accumulated earnings (deficit)	(—22,751.73)	58,308.88	152,678.71	146,444.49	297,232.27	246,311.14	185,016.10	344,798.26	582,580.70	788,629.17	1,068,892.12	1,210,817.30
Total liabilities and capital	184,505.96	192,013.49	319,353.34	339,764.81	399,748.01	600,540.47	731,495.12	887,503.96	1,101,051.67	1,382,512.95	1,604,108.81	2,409,117.07
Accumulated earnings—surplus adjustments:												
Net income (loss) by periods	(—22,751.73)	80,350.50	94,369.83	9,897.51	150,787.78	149,078.87	108,149.70	159,782.16	273,151.83	217,259.77	280,163.67	141,921.88
Surplus-capital transfers		710.11				200,000.00	170,000.00					
Surplus adjustments for prior years				*(—16,131.73)			555.26		(—35,369.39)	11,211.30	(—200.42)	

* The 1949 surplus adjustment includes $13,153.86 for Federal Income and Excess Profits taxes on account of the predecessor corporation, Scripture Press, Inc.

contains a chapel or assembly room for religious meetings to accommodate about 500 people, and a substantial number of classrooms or meeting rooms for smaller groups. The building has a church-like tower which is kept lighted at night. The building has been used regularly for conducting seminars for pastors and instructional sessions for Sunday School representatives. The plaintiff's employees hold their daily worship sessions in the chapel.

Plaintiff's building occupies about 4 acres of its 11-acre tract of land, and plaintiff has taken options to purchase contiguous land. Plaintiff's projected building plans call for the construction of dormitories and related facilities for the free housing and care of pastors, Sunday School teachers, and other church leaders in attendance at seminars and instructional meetings on plaintiff's premises.

54. The need for continued improvement in the training of Sunday School teachers and administrators is abundantly shown in the record of this case. Seminars and colleges of religion generally have not adequately prepared ministers, pastors and religious leaders for effective administration of the Sunday Schools. Most Sunday School teachers are lay members without adequate training for such assignments. Many of the smaller denominational churches have no publishing house or other agencies to assist them in such work.

Sunday School attendance in the United States declined by about 6 million between 1925 and 1945, but since 1945 has increased about 10 million. Quidnessett Baptist Church of East Greenwich, Rhode Island, has used plaintiff's teaching and lesson materials exclusively since 1946, and since that time its Sunday School attendance has increased 700 percent, whereas the population increase in its area has been 150 percent. Plaintiff has received numerous reports and indorsements of the quality and effectiveness of its materials.

It is reasonable to conclude that plaintiff has made a substantial contribution to the growth and development of the Sunday Schools in the United States.

It is the opinion of a number of outstanding religious leaders, who appeared and testified for plaintiff in this case, that plaintiff was and has been engaged in the ministry of religious education, and they likewise expressed the opinion that the predecessor corporation was similarly engaged.

55. The great majority of Sunday School lesson and teaching materials are published by denominational publishing houses, boards or other organized agencies of churches, and all of such publishing organizations are ruled tax-exempt by the Commissioner of Internal Revenue. All of such denominational publishing houses are controlled directly or indirectly by churches or church organizations, and any profits realized by them go to such churches or church organizations. One of the largest is the Methodist Publishing House of Cincinnati, Ohio, the income of which supports the pension fund of Methodist ministers. The Baptist Publishing Committee, comparable in size to the Methodist Publishing House, provides religious literature for Baptist Churches, although individual churches are free to use other materials.

Other such denominational press organizations, exempt from Federal taxes, are the Christian Board of Publication, Inc., also known as the Bethany Press, publishing for churches of Disciples of Christ; the Concordia Publishing House for the Evangelical Lutheran Synod of Missouri; the Otterbein Press for the Church of the United Brethren of Christ; the Nazarene Publishing House for the General Assembly of the Pentacostal Church of the Nazarene; the Gospel Trumpet, Inc., known as the Warner Press, for the General Assembly of the Church of God; and the Seabury Press, Inc., for the Protestant Episcopal Churches of the United States.

There is no substantial evidence in this case that any commercial printing companies, operating as profit organizations, produce and sell Sunday School teaching and lesson materials comparable to those of plaintiff, or engage in any religious educational programs.

Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that the plaintiff is not entitled to recover, and the petition is therefore dismissed.

IN THE UNITED STATES COURT OF CLAIMS

No. 115–56

(Decided January 18, 1961)

SCRIPTURE PRESS FOUNDATION

v.

THE UNITED STATES

Order

This case comes before the court on plaintiff's motions to amend judgment and for rehearing and reconsideration with regard to the Court's decision of January 18, 1961, together with defendant's responses. Upon consideration thereof,

IT IS ORDERED this nineteenth day of July, 1961, that plaintiff's motion to amend be and the same is granted in that the last paragraph of the opinion of January 18, 1961, is amended to read as follows:

> Therefore, plaintiff's petition will be dismissed in so far as it claims an exemption under section 101(6) of the Internal Revenue Code of 1939, *supra*. The case

will be remanded to the trial commissioner for further proceedings on plaintiff's remaining claims.

The Conclusion of Law entered on January 18, 1961, will be amended accordingly.

In all other respects the Court's decision of January 18, 1961, remains in full force and effect with plaintiff's motion for rehearing and reconsideration hereby denied.

BY THE COURT

J. WARREN MADDEN,
Acting Chief Judge.

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No. 504

In the Supreme Court of the United States

OCTOBER TERM, 1961

SCRIPTURE PRESS FOUNDATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE RESPONDENT IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 504

SCRIPTURE PRESS FOUNDATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion (Pet. 1a–13a) of the Court of Claims is reported at 285 F. 2d 800. The court's findings of fact are reprinted at Pet. 14a–61a.

JURISDICTION

The Court of Claims' amended judgment dismissing the taxpayer's petition, insofar as it claimed exemption under Section 101(6) of the Internal Revenue Code of 1939, was entered July 19, 1961 (Pet. 13a, 61a–62a). The petition for a writ of certiorari was filed on October 17, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the record warrants the finding of the court below that the petitioner corporation was operated for the primary purpose of carrying on a business for profit (publishing and selling religious educational materials), and therefore did not qualify for income tax exemption under Section 101(6) of the Internal Revenue Code of 1939 as a corporation "organized and operated exclusively for religious * * * or educational purposes".

STATUTES AND REGULATIONS INVOLVED

Sections 101, 421, and 422 of the Revenue Code of 1939 and Section 39.101(6)–1 of Treasury Regulations 118 are set forth in part in the Appendix, *infra*, pp. 17–21.

STATEMENT

In 1932, Mr. and Mrs. Victory Cory organized Scripture Press, Inc., a profit corporation under Illinois law, to publish and sell the All Bible Graded Series of Sunday School Lessons conceived and composed by Dr. Clarence H. Benson. The Corys, who have been the dominant personalities behind both Scripture Press, Inc. and the taxpayer, Scripture Press Foundation, are deeply religious people. They are adherents of the evangelical theory of the Protestant faith, and believe that they have a Christian mission to provide and disseminate improved Sunday school teaching and lesson materials and thereby advance and improve Christian education. (Pet. 1a, 4a, 36a, 37a, 42a–44a, 46a, 47a.)

The All Bible Lessons are lesson materials prepared in series according to age groupings of children

attending Sunday school. The lessons are dated for each Sunday in the calendar quarter for which the series is published. These lessons provide a high quality curriculum for Sunday schools which permits effective instruction, despite their lack of training, by lay teachers. (Pet. 36a, 59a.)

From an inconspicuous beginning, the sales of Scripture Press, Inc. steadily grew in volume and in profit. By May, 1945, its original capital of $2,500 had increased to $30,710 of capital and surplus. In addition to selling the Bible lessons, the corporation operated a book store in downtown Chicago. It also provided some instruction for Sunday school teachers and representatives and made some cash and merchandise grants to various religious organizations. (Pet. 36a, 37a, 38a, 40a, 46a.)

After having discussed the tax consequences of a tax exempt status with the accountant for Scripture Press, Inc., the Corys had the taxpayer, Scripture Press Foundation, organized under the Illinois "General Not for Profit Corporation Act" as a non-stock, non-profit corporation. The Corys, who owned all but one share of the corporation's stock, and Harry G. Saulnier, Mrs. Cory's brother-in-law, who owned the other share, donated their stock to the taxpayer-Foundation, and Scripture Press, Inc. was then liquidated into the taxpayer. (Pet. 14a, 21a, 38a, 48a.)

The taxpayer's original articles of incorporation stated that its purposes were the dissemination and distribution of the Gospel, the Scriptures, devotional literature, and of "helps and supplies for use in Christian activities", as well as the organization and

support of organizations, institutions, and movements exclusively devoted to Christian missionary educational and other evangelical efforts. To effect these purposes, the incorporating articles authorized the taxpayer to engage in—

> 1. The production, purchase, circulation, distribution, and sale of Christian literature, including books, periodicals, pamphlets, tracts, placards, mottos, and supplies; and
> 2. The conduct of publication and printing establishments.

The by-laws barred diversion of funds to any corporate member, director, or officer, other than for compensation for services. (Pet. 15a, 16a.)

The transfer of the business from the corporation to the taxpayer-foundation involved no changes in the mode of operations or in its policies except that the business enjoyed a rapid growth thereafter. The taxpayer has continued to publish the Bible lessons as well as other religious literature, and it has continued to provide instruction in Sunday school teaching. The taxpayer also purchases and sells items useful in the operation of a Sunday school; these sales comprise about 15 percent of its total business. In 1956, taxpayer completed construction of a new building at a total cost in excess of $1,000,000; of the total cost taxpayer expended $488,000 from its surplus and borrowed the remainder. In addition to carrying on all of its editorial, publishing, and sales operations in the building (except the Chicago bookstore), the taxpayer also operates a store there. In 1957, taxpayer employed about 240 persons, six of whom devoted their full

time to religious education instruction and sixteen of whom devoted only part of their time to that work. (Pet. 48a, 50a–58a.)

The taxpayer is not an institution of any church and has no affiliation, direct or indirect, with any religious denomination or church. Taxpayer's sales steadily increased from $1,170,444 for fiscal year ended January 31, 1951, to $2,529,953.42 for fiscal 1957. Taxpayer's capital upon organization in 1945, amounted to $30,710.11. By the end of fiscal 1957, capital and accumulated surplus amounted to $1,610,817 all of which represented earnings (except for the $30,710.11, the net worth of Scripture Press, Inc., on dissolution).

The taxpayer's annual expenditures for religious educational programs, its net profit *after* deduction of all expenses, including the aforementioned instructional expenses, and the balance of accumulated earnings is shown by the following table (Pet. 8a, 56a, Table II):

	1 Expenditures for religious educational programs	2 Net income after all deductions, including amounts in column 1	3 Accumulated retained surplus
1951	$21,847.67	$119,078.87	$476,311.14
1952	29,434.88	108,149.70	585,010.10
1953	30,472.08	159,782.16	744,798.26
1954	41,454.42	278,151.83	982,380.70
1955	46,378.93	217,250.77	1,188,629.17
1956	48,041.44	280,403.97	1,408,992.42
1957	72,886.27	141,924.88	1,610,817.30

In 1946, the taxpayer applied for and received a ruling from the Commissioner of Internal Revenue that it was exempt from income tax under Section 101 (6) of the 1939 Internal Revenue Code because it was

organized and operated exclusively for religious purposes. In March, 1953, the Supreme Court of Illinois held in *Scripture Press Foundation* v. *Annunzio,* 414 Ill. 339, that the taxpayer was not exempt under the Illinois Unemployment Compensation Act, which repeats in *haec verba* the operative language of 1939 Code Section 101(6). In October, 1953, the Commissioner of Internal Revenue requested certain information from the taxpayer in view of changes in revenue legislation subsequent to the issuance of the taxpayer's exemption ruling. After receiving the information and on December 31, 1953, the Commissioner revoked taxpayer's exemption for its fiscal year ended January 31, 1953, and for all subsequent years. (Pet. 28a–32a.)

Near the end of January, 1954, the taxpayer amended its articles of incorporation to eliminate the organizational purpose of operating a printing establishment and by including a paraphrase of the language of 1939 Code previously stated Section 101(6). The purposes previously stated were elaborated upon, and a provision was included to the effect that on dissolution, the assets were to be conveyed to a religious, charitable, scientific, literary or educational organization or organizations. Taxpayer protested the revocation of its exemption and on December 31, 1954, the protest was denied. (Pet. 18a–19a, 32a–35a.)

The taxpayer paid a tax in 1955 for fiscal years ended January 31, 1953, and 1954, on the income from its bookstores on the ground that the stores were an unrelated trade or business under Supplement U (Section 421, *et seq.*) of the 1939 Code

(which levies an income tax on such income of exempt organizations) and brought suit below for refund of the amounts paid on March 6, 1956. In March, 1957, the Commissioner proposed the assessment of deficiencies for both 1953 and 1954 with respect to the rest of taxpayer's income on the ground that taxpayer was not an exempt organization; he also proposed increases in the amount of its income as a result of certain adjustments. Taxpayer paid the additional amount claimed as due by the Commissioner for 1953 and amended its original petition to include this later payment, electing to remove the 1954 year from the Court of Claims' jurisdiction by filing a petition respecting it in the Tax Court (Pet. 14a, 35a.)

The Court of Claims found that a substantial, and the predominant, part of taxpayer's activities consisted of engaging in business for profit, *i.e.*, publishing and selling Bible lessons and other religious educational materials, and accordingly held that petitioner did not qualify for exemption from income tax under Section 101(6) of the Internal Revenue Code of 1939. (Pet. 1a–13a.)

ARGUMENT

The Court of Claims here found on the facts presented that the dominant purpose of petitioner was to engage in the commercial activity of selling religious literature. Under the statute, the Regulations, and the decisions of this and other courts, this finding, which is clearly supported by the evidence, precludes exemption from tax. There is no conflict of decisions or other occasion for review by this Court.

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1. To qualify for income tax exemption under Section 101(6) of the Internal Revenue Code of 1939, Appendix, *infra*, p. 17,[1] a corporation must satisfy several specified conditions, the chief one of which is that it be "organized and operated exclusively for religious * * * or educational purposes." The applicable Treasury Regulations provide that "an organization organized or operated for the primary purpose of carrying on a trade or business for profit is not exempt" under Section 101(6).[2] Section 39.101(6)-1(a)(1) and 1(d) of Treasury Regulations 118, Appendix, *infra*, p. 20.

As is plain from its opinion, the court below applied the test prescribed in the statute and in the Regulations. Addressing itself to the issue whether the taxpayer's publishing and selling activities were merely incidental to its religious or educational activities, or reflected the primary purpose of its organization and operations, the court concluded that (Pet. 10a–11a) petitioner's "primary" and "dominant" purpose was to carry on a business of selling religious educational literature for profit. Its conclusion is amply supported by the undisputed facts—the nature and extent of petitioner's business activities: the disparity between the large amounts of sales

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[1] 1954 Code Section 501(c)(3) is substantially the same, but is not applicable to the taxable year here involved (fiscal year ended January 31, 1953). See 1954 Code Section 7851(a)(1)(A).

[2] The "profit" proscribed means simply an excess of receipts over costs, since the inurement of such profits to a private individual would automatically disqualify the organization under the statute and Section 39.101(6)-1(a)(2) of the same regulation.

profits realized annually from 1951 to 1957 and the amounts expended for religious or educational purposes, resulting in a steadily increasing accumulated earned surplus; and the relatively small number of employees engaged in religious and educational work as compared with those engaged in business activities.[3] The Illinois Supreme Court reached the same conclusion as to this corporation in an earlier case under the Illinois Unemployment Compensation Act which repeats the language of 1939 Code Section 101(6). *Scripture Press Foundation* v. *Annunzio*, 414 Ill. 339.

2. The decision below is not, as petitioner implies (Pet. 13–14, 19), in conflict with *Trinidad* v. *Sagrada Orden*, 263 U.S. 578. In that case an exempt religious organization undertook as a minor part of its activities to sell wine and chocolate to its member churches, from which activities it received a trivial amount of income. The government contended that these activities deprived the organization of its tax exempt status, because it was not "operated exclusively" for religious purposes. In holding that the

[3] The Court contrasted the substantial amount of petitioner's accumulated earnings from publishing and selling bible lessons and other literature, and operating a book store, with the amount spent for religious or educational purposes. As appears from the court's findings and tabulations (Pet. 8a, 40a), between 1950 and 1957 petitioner accumulated earnings totaling $1,580,107.19, while during the same period it spent a total of $296,483 on religious education, thus retaining about 80 per cent of its sales profits. Moreover, out of 240 employees only six devoted full time and 16 part time to religious education, over 90 per cent being engaged full time in the business of publishing and selling. (Pet. 48a.)

organization did not lose its exemption, the Court (p. 581) used the language quoted by petitioner (Pet. 14) suggesting that the exemption depended not upon the "source of the income", but rather upon its "destination." However, the Court immediately thereafter noted (p. 581) that such "limited trading, if it can be called such, is purely incidental to the pursuit of those [religious] purposes, and is in no sense a distinct or external venture."[4]

The plain implication of the Court's decision in *Sagrada Orden* (p. 582) is that a corporation whose activities "amount to engaging in trade", such as "selling to the public or in competition with others", is not within the exempt class even though it also performs tax exempt activities. In short, the very reasons which impelled this Court in *Sagrada Orden* to hold that the organization there involved was exempt compels the opposite conclusion here. See *United States* v. *Community Services,* 189 F. 2d 421 (C.A. 4th), certiorari denied, 342 U.S. 932; Sec-

[4] The crux of its opinion is to be found in the following language (p. 582):

"As respects the transactions in wine, chocolate and other articles, we think they do not amount to engaging in trade in any proper sense of the term. It is not claimed that there is any selling to the public or in competition with others. The articles are merely bought and supplied for use within the plaintiff's own organization and agencies—some of them for strictly religious use and the others for uses which are purely incidental to the work which the plaintiff is carrying on. That the transactions yield some profit is in the circumstances a negligible factor. Financial gain is not the end to which they are directed."

tion 39.101(6)-1(d) of Treasury Regulations 118, Appendix, *infra*, p. 20.

In *Better Business Bureau* v. *United States*, 326 U.S. 279, relied on by petitioner as confirming the "destination" test (Pet. 15), this Court decided that the ultimate purposes were not exclusively educational, and had no occasion to consider the effect of a severable commercial activity on the ultimate purpose.

3. Nor is the decision below in conflict with *Commissioner* v. *Orton*, 173 F. 2d 483 (C.A. 6th), the principal appellate decision upon which petitioner relies. (Pet. 15.) The court there declined to disturb the Tax Court's findings that the "predominate purpose" for which the taxpayer foundation was organized and operated was to promote the science or art of ceramics, and that the earnings derived from the sales of ceramics were used to further research in the field of ceramics. Here, on the other hand, the Court of Claims found that petitioner's primary and dominant purpose was to engage in the business of publishing and selling religious educational materials for profit, and that only a fraction of its profits was used for religious or educational purposes.

The difference in the underlying facts makes clear the reasons for allowing exemption in *Orton*. The founder there took great care that all commercial activity should be subordinate to the scientific purpose.[5] An accumulation of profits was prevented by

[5] For example, the manufacturing business was to be terminated "if scientific progress makes it no longer necessary or

a specified pricing formula that held profits down and directed that a substantial percentage of gross revenues (all of the profits) be spent on research and experimentation. Neither the express subordination of commercial activity nor the immediate devotion of excess revenues to the exempt purpose is present in this case.[6]

Sico Co. v. *United States,* 102 F. Supp. 197, upon which petitioner also relies (Pet. 15), was decided by the Court of Claims, the same court which decided the instant case, and is to be contrasted with the recent contrary decision of the same court in *Sico Foundation* v. *United States,* 61–2 C.C.H., par. 9732 (C. Cls., November 1, 1961). These two cases involved a "feeder corporation"—a corporation which engages in business activity itself but is committed to pay over all its income to charity. Prior to 1950 some feeder corporations were found exempt, as was Sico, but Congress expressly made them taxable under a new paragraph added to Section 101(6) of the Code by Section 301(b) of the Revenue Act of 1950,

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desirable to continue" and the assets were to be paid over to Ohio State University. 173 F. 2d, at p. 485.

[6] To the contrary petitioner has stated (Pet. 30a):

"We do not make any distributions of profits as such. We endeavor to maintain a sound financial condition. We find ourselves compelled to shortly give up inadequate rented quarters in Chicago; and we are seeking to procure finances for a suitable headquarters building outside the City. We have started a reserve toward its cost.

"We treat as a part of our current expense the amounts which we expend directly for religious purposes without requiring or seeking any direct return. These are shown on Schedule 5. In addition, we serve churches generally on as near a sound cost basis as we think we conservatively can."

disclaiming any intent to affect decisions under prior law. See H. Rep. No. 2319, 81st Cong., 2d Sess., pp. 36–37, 41–42, 124 (1950–2 Cum. Bull. 380, 409, 412 469); S. Rep. No. 2375, 81st Cong., 2d Sess., pp. 28–29, 35, 116 (1950–2 Cum. Bull. 483, 504, 509, 565–566). Some courts found feeders taxable for prior years without benefit of legislation. See, *e.g.*, *United States* v. *Community Services, supra.*

A court which had found a feeder corporation exempt under the destination test before these amendments would presumably find the petitioner—a self-feeder—exempt if it continued to follow the same rule for later years. However, the Court of Claims in this case, and in the second *Sico* case, has interpreted the 1950 amendments[7] as reflecting a Congressional rejection of the ultimate destination of the funds as the sole criterion of exemption after 1950. No court of appeals which followed the destination test has decided that it will persist under present law. Thus there is no conflict of decisions at this time.

4. Petitioner attempts at some length to associate its tax status with that of tax-exempt denominational publishing houses—publishers owned and operated by established churches. (Pet. 19–21.) It is suggested that the decision of the Court of Claims in this case will cut off their exemptions as well.

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[7] Section 301(a) of the Revenue Act of 1950 also added a tax on unrelated business income, Supplement U to the 1939 Code (Section 421, *et seq.*). Since the Court of Claims held the petitioner not to be exempt, it did not decide the extent to which the business profits of petitioner should be taxed under these sections.

We suggest, however, that an organization subject to direct church control places less emphasis on profitable operation and when profits arise devotes them immediately to exempt purposes. The profit-making thus tends to be subordinated to the larger purposes of the church. If in a specific case a denominational publishing house escaped these normal controls and concentrated its energies on commercial activity to the same extent as petitioner here, it, too, would lose its exemption under the Regulations as applied by the Court of Claims below. Petitioner is not discriminated against merely because no competitor has hitherto been found to have placed its primary emphasis on commercial activity. The same rules are applicable to both.

5. Even if this Court were disposed to consider a case on the current vitality of the destination test, this case is not a satisfactory one for resolution of the point as this corporation's earnings during the year in question may not have been irrevocably committed for religious or educational purposes. The Supreme Court of Illinois in 1953 held as to this same corporation (*Scripture Press Foundation* v. *Annunzio, supra*, 414 Ill. at pp. 357–358):

> Under the provisions of sections 45(d) and 45(e) of the general Not-for-Profit Corporation Act of Illinois the members and officers of Scripture Press Foundation, upon its dissolution, would determine, in their discretion, the manner in which its assets would be distributed, without limitation.

While the Court of Claims did not rest its decision below on this ground, and while there may be room for argument over the implications of the Illinois Supreme Court's opinion, it would present obvious difficulties for this Court to have to resolve that question of local law in order to reach the federal question. Petitioner amended its articles of incorporation in 1954 to impose the prescribed limitation on distribution of assets (Pet. 12a), but it may be doubted that this amendment would retroactively make the organization exempt for 1953, the only year in question here. At the very least it can be said that it is unclear that petitioner's earnings for 1953 were irrevocably committed to religious or educational purposes during the year for which exemption is sought. In such circumstances, review of this case might not result in clarification of the destination test.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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January, 1962.

APPENDIX

Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.):

SEC. 101. EXEMPTIONS FROM TAX ON CORPORATIONS.

Except as provided in paragraph 12(B) and in supplement U, the following organizations shall be exempt from taxation under this chapter—

* * * * *

(6) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation. For loss of exemption under certain circumstances, see sections 3813 and 3814;

* * * * *

An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For the purposes of this paragraph, the term "trade or business" shall not include the rental by an organization of its real property (including

personal property leased with the real property).[8]

* * * * *

Supplement U—Taxation of Business Income of Certain Section 101 Organizations[9]

SEC. 421. IMPOSITION OF TAX.

(a) *In General.*—There shall be levied, collected, and paid for each taxable year beginning after December 31, 1950—

(1) upon the supplement U net income (as defined in subsection (c)) of every organization described in subsection (b)(1), a normal tax of 25 per centum of the supplement U net income, and a surtax of 20 per centum of the amount of the supplement U net income in excess of $25,000.

* * * * *

(b) *Organizations Subject to Tax.*—

(1) *Organizations taxable as corporations.*—The taxes imposed by subsection (a)(1) shall apply in the case of any organization (other than a church, a convention or association of churches, or a trust described in paragraph (2)) which is exempt, except as provided in this supplement, from taxation under this chap-

[8] The last-quoted paragraph of Section 101, added by Section 301(b) of the Revenue Act of 1950, 64 Stat. 906, 953. Section 303 of that Act provided:

"SEC. 303. EFFECTIVE DATE OF PART I.

"The amendments made by this part shall be applicable only with respect to taxable years beginning after December 31, 1950. The determination as to whether an organization is exempt under section 101 of the Internal Revenue Code from taxation for any taxable year beginning before January 1, 1951, shall be made as if section 301(b) of this Act had not been enacted and without inferences drawn from the fact that the amendment made by such section is not expressly made applicable with respect to taxable years beginning before January 1, 1951."

[9] Supplement U was added by Section 301(a) of the Revenue Act of 1950, 64 Stat. 906, 947.

ter by reason of paragraph (1), (6), or (7) of section 101. * * *

* * * * *

(c) *Definition of supplement U net income.*—The term "supplement U net income" of an organization means the amount by which its unrelated business net income (as defined in section 422) exceeds $1,000.

* * * * *

SEC. 422. UNRELATED BUSINESS NET INCOME.

(a) *Definition.*—The term "unrelated business net income" means the gross income derived by any organization from any unrelated trade or business (as defined in subsection (b)) regularly carried on by it less the deductions allowed by section 23 which are directly connected with the carrying on of such trade or business, subject to the following exceptions, additions, and limitations: * * *

* * * * *

(b) *Unrelated Trade or Business.*—The term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 421(a), any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 101, except that such term shall not include any trade or business—

(1) in which substantially all the work in carrying on such trade or business is performed for the organization without compensation; or

(2) which is carried on, in the case of an organization described in section 101(6), by the organization primarily for the convenience of its members, students, patients, officers, or employees; or

(3) which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

* * * * *

2. Treasury Regulations 118, promulgated under the Internal Revenue Code of 1939:

SEC. 39.101(6)-1 RELIGIOUS, CHARITABLE, SCIENTIFIC, LITERARY, AND EDUCATIONAL ORGANIZATIONS AND COMMUNITY CHESTS.

(a) In order to be exempt under section 101(6), the organization must meet three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes;

(2) Its net income must not inure in whole or in part to the benefit of private shareholders or individuals; and

(3) It must not by any substantial part of its activities attempt to influence legislation by propaganda or otherwise.

* * * * *

(d) Since an organization exempt under section 101(6) must be organized and operated exclusively for one or more of the specified purposes, an organization organized or operated for the primary purpose of carrying on a trade or business for profit is not exempt thereunder. Thus, such an organization is not exempt under section 101(6) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See section 101(18) as to religious or apostolic associations or corporations. Organizations, including trusts, otherwise exempt from tax under this section (other than a church, or a convention or association of churches) are taxable on Supplement U net income. See sections 421 to 424, inclusive, and the regulations thereunder.

(e) A corporation otherwise exempt under section 101(6) does not lose its status as an exempt corporation by receiving income such as rent, dividends, and interest from investments, provided such income is devoted exclusively to one or more of the purposes specified in that section.

U.S. GOVERNMENT PRINTING OFFICE : 1962

IN THE

Supreme Court of the United States

OCTOBER TERM 1961

No. 504

SCRIPTURE PRESS FOUNDATION, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

On Petition for a Writ of Certiorari to the United States Court of Claims

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner files this Reply Brief to call the Court's attention to the increased confusion surrounding the issue presented by this case and the even greater need for an authoritative resolution of that issue.

1. The United States has conceded (Brief, pp. 12-13) that the Court of Claims has rendered "contrary"

decisions in the two *Sico* cases[1] and that the court, in the second *Sico* case and in the instant case, has interpreted the 1950 amendments "as reflecting a Congressional rejection of the ultimate destination of the funds as the sole criterion of exemption after 1950." The Government has thereby put into sharp focus the confusion that abounds as to whether the ruling of this Court in *Trinidad* v. *Sagrada Orden*, 263 U.S. 581 (1924)—that "the destination [is] the ultimate test of exemption"—is still controlling.

That confusion has been further compounded since the filing of the petition and of the Government's brief in opposition. On January 12, 1962, a majority of the Judges of the Court of Claims overruled a motion for rehearing in the second *Sico* case. But two Judges filed a dissenting opinion, written by the author (Chief Judge Jones) of the opinion below in the instant case. That opinion is reprinted in the appendix hereto. In this dissenting opinion, Chief Judge Jones takes direct issue with the position espoused by the Court of Claims in the second *Sico* case and in the instant one that destination is no longer decisive in determining the right to exemption. In his words:

> "The majority opinion states that the 'destination of the corporation's income is no longer decisive in determining its right to exemption.' *We regard the destination as all-important.* For any

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[1] In the first *Sico* case, *Sico Company* v. *United States*, 121 Ct. Cls. 373, 389, 102 F. Supp. 197, 199 (1952), the court stated that "the exemption from taxation granted by the statutes makes the destination of the income . . . rather than its source, the ultimate test of its exemption." But in *Sico Foundation* v. *United States*, 61-2 C.C.H. ¶9732 (Ct. Cls., Nov. 1, 1961), the court said that "the destination of a corporation's income is no longer decisive in determining its right to exemption."

> income to be tax exempt it must be devoted exclusively to religious, educational, or charitable purposes. The [1950] amendment did not in any sense change this requirement. It simply added the additional requirement that the funds of the organization for which exemption is claimed *must not arise from business operations that would thus by virtue of its tax exemption have an advantage over competing commercial companies.*" [emphasis supplied]

Obviously, Chief Judge Jones has changed his own mind since writing his opinion in the instant case and has repudiated his former position and now advocates the position of the Petitioner that the destination test has not been destroyed, but has been merely qualified so as to make it inapplicable to activities which are competitive with regular commercial taxpaying organizations.

The appropriateness and, indeed, the necessity of review by this Court thus become increasingly apparent. The completely divergent viewpoints as to whether the destination or the source is the hallmark of exemption, in situations where commercial competition is absent, have created confusion and chaos in the administration of § 501(*c*)(3) of the Internal Revenue Code of 1954.

2. The United States, having finally decided to support the decision of the Court of Claims in this case,[2] seeks to shift the emphasis from the uncontroverted

[2] The United States was uncertain as to what position to take with respect to the question raised in the petition. In seeking and obtaining an extension of time in which to respond to the petition, the United States advised this Court that "differences of view have arisen among government counsel as to the position the government should take in this case", making an extension necessary "to permit consultation among the interested agencies in order to resolve these differences."

evidence that all of petitioner's profits are devoted exclusively to religious or educational purposes. The claim now is that the disparity between petitioner's sales and religious or educational expenditures was so great and resulted in such steadily increasing accumulated earned surplus that petitioner's primary activity must *a fortiori* be considered to be that of carrying on a business for profit. Brief, pp. 8-9.[3]

The vice of the Government's position is that the accumulation of earned surplus by any exempt organization serves to weaken and then destroy its exemption. That is precisely why the ruling below throws into jeopardy the tax exemption of every religious, educational and charitable organization in the country that dares to accumulate some of its profits even though dedicated and eventually used for exempt purposes, such as in the case of the denominational publishing houses and the National Geographic Society. And that jeopardy is created in the context of a situation where

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[3] The Government, as did the court below, refers (Brief, p. 5) to *annual* expenditures for religious educational purposes, in comparison to *accumulated* capital and surplus. Such a computation, however, fails to consider cash donations and merchandise grants, as well as petitioner's building, as being part of petitioner's expenditures in furtherance of its admitted purpose to "improve and better Sunday Schools" and in furtherance of its admitted contribution of the growth of Sunday Schools in the United States (Finding 54, Pet. 60a).

Although the court below found only a total of $296,483.34 for expenditures in 1951-1957 for religious educational purposes, the true total figure revealed by the record (including donations and grants) was $432,842.01. This was the result of an oversight by the Commissioner in overlooking two uncontrovered exhibits of petitioner. Adding the cost of the building brings the total religious expenditures to $1,675,864.89, with only $591,086.89 of accumulated surplus remaining unexpended. Even the latter amount is irrevocably dedicated to the petitioner's exempt purposes.

the uncontroverted finding has been made (Finding No. 55, Pet. 61a) that petitioner's selling activities in no way compete with commercial business, its sole competition in this field being with exempt religious publishing organizations.

The emphasis thus placed on accumulated earned surplus—to the total exclusion of the fact that such surplus is eventually spent solely for religious or educational purposes—serves to pervert and destroy the destination test. As was said in *Trinidad* v. *Sagrada Orden*, 263, U.S. 578, 581 (1924), a corporation may be "organized and operated exclusively for religious, charitable, scientific or educational purposes, and yet have a net income." And tax exemption would not seem to turn on whether that net income is immediately spent or is accumulated, so long as it is devoted exclusively to religious educational purposes.

Most schools, hospitals and social clubs are organized under not-for-profit corporate laws. However, there are also many schools, hospitals and social clubs which by choice have been organized on the same basis as any regular business concern with its net profits being distributed to the stockholder owners. Although these organizations might have identical facilities, programs, charges, income and profits, the former are tax exempt while the latter are not. Certainly the "source" test does not determine tax status for these organizations, as the source of revenue in both types of organizations is identical. Why then is one exempt and the other not? This is simply because the net income or profits and accumulated earned surplus is "destined", dedicated, or used for two different purposes. In the one instance the net income or profits and accumulated earned surplus is "destined", dedi-

cated and used to further the exempt purposes, while in the other instance to line the pockets of the stockholder owners. Although there are a number of schools, hospitals and social clubs organized as commercial profit concerns, nevertheless this is still not a field of business or activity which is considered commercially competitive, and there is therefore no prohibition to having tax exempt schools, hospitals and social clubs. Those schools, hospitals and social clubs which are organized for profit do so by choice and are therefore taxable by choice. In the field of publishing Sunday School lesson material, which is the activity of the petitioner, this is also a field where commercial competition is absent. However, in certain religious, educational and scientific publishing fields, where there is commercial competition, the latter are commercial and non tax exempt by choice and not mandatorily so, as would be the case in an ordinary business or commercial activity. There are no commercial taxpaying concerns who suffer a disadvantage at the hands of petitioner or others engaged in similar activity. The destination of the net income or profits and accumulated earned surplus in such type organizations must therefore continue to be the sole test of tax exemption.

3. The Government's claim (Brief, pp. 14-15) that review of this case might not result in clarification of the destination test is without merit. It is not necessary for this Court to resolve any question of Illinois law in order to reach the federal tax exemption question. The short reason is that no decision or *obiter dictum* of the Illinois Supreme Court in the *Annunzio* or any other case can be decisive in determining eligibility for federal tax exemption. And, as the Government concedes (Brief, p. 15), the Court of Claims did not rest its decision on any local law ground.

The longer answer, and one that need not be pursued here at length, is that every indicia (including the original charter) of the purposes to which the petitioner was organized, operated and devoted, including expenditure of its funds, in 1953 were of a religious or educational nature. There is not one scintilla of evidence, let alone findings, that petitioner in any sense nurtured any other type of purpose.

The fact situation in the instant case thus sharply presents the question, in situations where commercial competition is absent, whether the destination test, which test originated with this Court, is still the sole criterion of tax exemption, or whether exemption is lost merely because activities produce a net income or profit and there is an accumulation of earned surplus. That is the question that disturbs the tax bar, that has confused the courts below and that has cast into doubt innumerable tax exemptions now extant.

For these various reasons, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 338-57

(Decided January 12, 1962)

THE SICO FOUNDATION

v.

THE UNITED STATES

Fleming Bomar for plaintiff. *Irins, Phillips, & Barker* were on the briefs.

Joel N. Simon, with whom was *Assistant Attorney General Louis F. Oberdorfer*, for defendant. *Philip R. Miller* was on the briefs.

ON PLAINTIFF'S MOTION FOR REHEARING

PER CURIAM: For the reasons stated in the previous opinion, the majority of the court feels that the motion for rehearing herein should be overruled.

It is so ordered.

JONES, *Chief Judge*, whom DURFEE, *Judge*, joins, dissenting:

We think the majority opinion goes too far in applying the 1950 amendment to section 101 of the Internal Revenue Act of 1939, and has given its terms a much broader meaning than was intended by the Congress.

Section 101 of the Revenue Act of 1939 listed several types of corporations which were in terms made exempt from the income tax. Among these exempted corporations were the following:

> (6) Corporations, * * * organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, * * * no part of the net earn-

> ings of which inures to the benefit of any private shareholder or individual, * * *.
>
> (14) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this chapter; [26 U.S.C. § 101 (1952 ed.)]

Prior to 1950, the plaintiff corporation was exempt from such taxation. We have so held. *The Sico Company* v. *United States*, 121 Ct. Cl. 373.

The majority has concluded that since the 1950 amendment the plaintiff is no longer exempt. The amendment is as follows:

> (b) FEEDER ORGANIZATIONS.—Section 101 is hereby amended by adding at the end thereof the following paragraph:
>
> "An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under any paragraph of this section on the ground that all of its profits are payable to one or more organizations exempt under this section from taxation. For the purposes of this paragraph the term 'trade or business' shall not include the rental by an organization of its real property (including personal property leased with the real property)." [64 Stat. 906, 953]

The trial commissioner has found as a fact that plaintiff is operated for the primary purpose of carrying on a trade or business for profit. He then finds that all of its net income is subject to taxation, notwithstanding that most of such income for the years involved came from what the statute refers to as passive income and which is not a part of plaintiff's business operation.

We disagree both with this finding of fact and the conclusion reached by the court. The second sentence of paragraph (b) of the 1950 amendment and the Senate Finance

Committee report, hereafter discussed, are completely ignored.

We would hold that that part of plaintiff's income which flows from its business operations should be taxed and that the part of the income which consists of rentals, and other income wholly separate from the business and which is entirely devoted to educational purposes should not be taxed.

The plaintiff was organized under Delaware law as a non-stock, charitable, and educational organization. It was organized in 1941 as The Sico Company, and the name in 1955 was changed to The Sico Foundation. Mr. Schock, the founder, as a young man had difficulty in trying to secure an education. He determined to use his efforts and his fortune in helping young men secure an education, through scholarships and other forms of aiding young people to accomplish this purpose. Until his death in 1955 he devoted much of his energies and talents toward that end.

It will be noted that the amendment denies exemption to an organization operated for the primary purpose of carrying on a trade or business for profit. The key word is the *purpose* of the organization's operation.

The status of each corporation of this kind depends not only upon the interpretation of the applicable law but also upon the facts. Like human faces, practically no two are exactly alike. What was the purpose of this organization? Let us take a look at the record.

The corporation was organized on December 18, 1941. The most pertinent provisions are set out in finding 6. We quote from paragraph THREE as follows:

> The objects and purposes for which this corporation is formed, and which are proposed to be transacted and carried on, are any and all activities which have for the objects solely the promotion of public educational literary and scientific purposes, by the appropriation and application of funds and property of this

> corporation to and for the exclusive benefit of public schools in any state or states of the United States of America, and any political subdivision thereof; provided no part of the net earnings of the corporation shall inure to the benefit of any member, director or individual of this corporation, but said net earnings shall be used exclusively for the charitable purposes hereinabove set forth.

The instrument further provides that the organization may accept gifts, grants, devises or bequests for the objects and purposes described. It further provides that in case of dissolution of the corporation the net assets thereof should be converted into cash and "shall be distributed as follows: one-fourth to the school district in the Borough of Mount Joy and the remaining assets paid over to state teachers colleges." It further provides that "no power of amendment, modification, alteration, or repeal shall be exercised to defeat the objects and purposes for which this corporation is organized."

There is not the slightest doubt that from the time the corporation was organized in 1941 until the amendment was enacted in 1950 the corporation was, in the terms of the statute, an exempt organization. It was so held by the courts and was so interpreted by the Commissioner of Internal Revenue.

There is no question whatever of the original purpose of the organization and its operations prior to 1950. There is no question now unless the 1950 amendment changed the purpose of the organization. How can a later change in the law change the purpose for which a prior organization was formed? The plaintiff stands on an entirely different footing than a corporation organized after the 1950 amendment.

What did the Congress mean to do by the 1950 amendment? Manifestly from the Senate Finance Committee's report, which is set out on page 8 of the slip opinion, they simply meant to tax organizations that had been using

their profits tax free to expand operations and also to acquire their businesses with little or no investment. The Senate report further states that the "provisions merely impose the same tax on income derived from an unrelated trade or business as is borne by their competitors. In fact it is not intended that the tax imposed on unrelated business income will have any effect on the tax-exempt status of any organization. *An organization which is exempt prior to the enactment of this bill, if continuing the same activities, would still be exempt after this bill becomes law.*" [Italics supplied.]

If this report stood alone there would be little doubt that since plaintiff organization was exempt at the time the amendment was passed its entire operations would continue to be exempt. However, when this report and law are read in connection with other provisions of law it becomes apparent that the Congress intended thereafter to tax any organization on any income flowing directly from operations conducted primarily for profit. It was clearly meant to stop any unfair advantage in its operations that were in direct conflict with similar commercial concerns which do not enjoy tax exemption in similar operations.

The whole purpose of the amendment therefore can be achieved by levying a tax on the income from the active business operations of The Sico Foundation and treating its passive income, that is, its income from property held for rents and other forms of income and donations, which is wholly unrelated to the business operation, as tax exempt.[1]

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[1] The Senate Finance Committee report in respect to the 1950 amendment also contains the following:

"Dividends, interest, royalties, most rents, capital gains and losses and similar items are excluded from the base of the tax on unrelated income because your committee believes that they are 'passive' in character and are not likely to result in serious competition for taxable businesses having similar income. Moreover, investment-producing incomes of these types have long been recognized as a proper source of revenue for educational and charitable organizations and trusts."

We would also hold as not tax exempt any passive funds that might have been diverted for the purpose of paying losses on the business operations during the period in question.

The majority opinion states that the "destination of the corporation's income is no longer decisive in determining its right to exemption." We regard the destination as all-important. For any income to be tax exempt it must be devoted exclusively to religious, educational, or charitable purposes. The amendment did not in any sense change this requirement. It simply added the additional requirement that the funds of the organization for which exemption is claimed must not arise from business operations that would thus by virtue of its tax exemption have an advantage over competing commercial companies.

When all of the provisions of the statute, the provisions of the charter, and the nature of the income of the plaintiff organization are laid alongside, it becomes manifest that the interpretation which we have suggested completely meets the terms of the statute and its application would be on all fours with the evident purpose and meaning of the Congress in enacting the 1950 amendment. No other reasonable conclusion can be reached.

The conclusion of the majority, it seems to us, is altogether too technical. Does anyone believe that it was the intention of the Congress that because, forsooth, an organization whose entire purpose was educational and which was entirely exempt at the time of its organization should, because of the amendment in question, be taxed not only on its competing business activities, which was the whole purpose of the amendment, but also upon its passive income, interest, dividends, donations, and rentals from properties wholly unrelated to the business activity?

Here was a man who because of financial difficulties was unable to secure the education which he greatly desired.

From the rough hewn paths of his early youth all the way to the end of life's journey, the founder of the plaintiff organization devoted practically all his net income to extending to young men the educational privileges which he had been denied. This is in complete accord with the American dream. An educated citizenship is the only means by which a free people can remain free. No man and no people can maintain their rights unless they understand them. How can they understand them without training and education? An untrained and unlettered people are the natural victims of tyrants and dictators. We cannot believe that it was the intention of the Congress to take away the entire exemption of an organization of this type and thus to discourage the spirit that prompts generous citizens to assist in the processes of education. The facts and circumstances disclosed in the background and record in this case preclude any such conclusion. The wording of the amendment does not require it; the language of the committee report does not compel it; common sense and reason should not so interpret and apply it.

We would grant the motion for rehearing and permit plaintiff to recover the tax on the passive income which was wholly unrelated to the plaintiff's business activities, less any part thereof which may have been diverted to the payment of business losses during the period in question.